United States Court of Appeals

for the Second Circuit

APPENDIX

75-5024

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-5024

B

HARVEY R. MILLER, as Trustee in Bankruptcy of IRA HAUPT & Co., a Limited Partnership, Bankrupt,
Plaintiff-Appellant,

—against—

NEW YORK PRODUCE EXCHANGE *et al.*,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

Volume III
(Pages 1371a – 1836a)

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bankruptcy. No one in the trade really feels -- business is at a standstill, so there has not been a very large volume of business. Also it has so happened that since the middle of November when Allied went out of business, there have been no big business at all. We had no - opportunity of participating in any business if we wanted to."

MR. HARRIS: Your Honor, before we call our next witness, may I have a moment to confer with Mr. Fryer about a stipulation.

(Pause.)

MR. HARRIS: The next withess, your Honor, is Walter Klein.

W A L T E R C. K L E I N, a witness called by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

MR. HARRIS: Your Honor, Mr. Fryer and I have worked out a stipulation on some background facts. I would just like to read the stipulation relating to Mr, Klein.

First, your Honor, it is agreed that defendant Walter Klein is currently the president of

Bunge Corporation since 1959. It is further agreed that Walter Klein first joined Bunge Corporation in 1947 and that he became a vice-president of Bunge in 1952. It is further agreed that in 1955 Mr. Klein became a director of Bunge Corporation and at that time was involved in Bunge's interior grain program.

It is further agreed that during 1963 Bunge Corporation had a demonstrating fats and oils business but that its major business in fats and oils was in exports. It is further agreed that in 1963 Walter Klein was a member of the Chicago Board of Trade, the Winnipeg Exchange and the New York Produce Exchange.

It is further agreed that since 1959 and during 1963 Walter Klein was a member of the Board of Managers of the New York Produce Exchange.

It is further agreed that during 1963 Walter Klein was on the Executive Committee of the New York Produce Exchange.

Also, at this time, your Honor, I would like to offer Plaintiff's Exhibit 200 for identification, which is Mr. Klein's membership application to the New York Produce Exchange.

MR. FRYER: No objection, your Honor.

(Plaintiff's Exhibit 200 received in evidence.)

DIRECT EXAMINATION

BY MR. HARRIS:

Q Mr. Klein, do you recall what the function of the Executive Committee of the New York Produce Exchange was in 1963?

A Not specifically differentiated from being on the Board of Membership. I recall no meeting, no organizational meeting, no meetings during 1963.

Q Of the Executive Committee?

A Of the Executive Committee.

Q Mr. Klein, did you know in 1963 that Mr. Richard Forti of Bunge was a member of the Cottonseed Products Committee of the New York Produce Exchange?

A I don't recall, but I would say that I probably knew it at the time.

Q At that time did you know what the purpose and function of the Cottonseed Oil Products Committee of the Exchange was?

A No.

Q Were you familiar with the operation of the Business Conduct Committee of the Produce Exchange during 1963?

A No, I was not.

Q Do you know who was chairman of the Business

Conduct Committee in 1963?

A No.

Q Do you know who was chairman of the Cottonseed Oil Products Committee during 1963?

A I don't know now. I might have known then.

Q Did you ever discuss, and I mean "ever" meaning during 1963, sir, with Mr. Forti what was happening, if anything, at the meetings of the Cottonseed Products Committee?

A I recall no discussions.

Q You knew, did you not, sir, that the Board of Managers in 1963 had a responsibility to supervise the activities of the New York Produce Exchange?

A Yes.

Q Did you regularly attend meetings of the Board of Managers of the New York Produce Exchange during 1963, sir?

A I attended the meetings which existed when I was in town. I traveled a great deal. I believe in 1963 that I was present at only one meeting.

Q Do you recall what meeting that was?

A I believe it was the meeting of November 14, 1963.

Q Do you recall how regularly the Board of

of the Board of Managers of the New York Produce Exchange on April 4, 1963, and ask you if you were present at that meeting?

A No, I was not present.

Q Would you look at Plaintiff's Exhibit 109 and see if you were out of town on October 3, 1963?

A I was in town.

Q I would like to have you take a look at Plaintiff's Exhibit 12-G for identification, which are the minutes of a meeting of the Board of Managers of the Produce Exchange which occurred on October 3, 1963, and ask you if you were present at that meeting?

A No, I was not.

Q Do you recall, Mr. Klein, how it was that you were nominated to become a member of the Board of Managers of the Produce Exchange?

A I believe I was nominated when a prior Board of Managers who had represented our company, Mr. Hirschler, was transferred from New York. He had represented Bunge, and when he left New York in 1959 I came on as a representative of Bunge really in the grain business.

Q Mr. Klein, during 1963 did you keep yourself generally informed as to the market activity that was taking place on the New York Produce Exchange?

A Not in great detail. In fact, I would say that, as I said at the outset, that I was in that year traveling a great deal and was working on -- we were a large company -- and even though the Produce Exchange which represented the oil business which in our case was rather large, it still represented only something like 10 or 15 per cent of our total business.

So I was developing our growth in the midwest for the origination of grain, and I was also spending quite a bit of time on foreign business. I traveled a great deal abroad.

So I did not really stay up on market information. That was what you might say the trader managers were doing. They would inform me of how markets were doing, but I didn't go to original documents or pricings.

Q Just to follow up on what you just said, is it fair to state from what you were saying that you paid more attention to the grain end of Bunge's business during 1963 than the fats and oils end?

A Well, I paid attention to Bunge's fats and oil business as it would be related to me during the year from Mr. Forti and Mr. Fornari, who were two vice-presidents in charge of that business, but I naturally followed the grain business and our export business

in particular and the domestic development to a larger extent.

Q You knew in 1963 that Mr. Fornari and Mr. Forti kept themselves abreast of the market conditions in the oil business; isn't that right?

A That is correct.

Q When you were out of town did you request either of those two gentlemen to keep themselves apprised of what was going on and to let you know about any market activity on the New York Produce Exchange?

A Their job was to keep informed in the fats and oil field and they did inform me of whatever they deemed important in that field. That was their function.

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Q From time to time during 1963 did you inquire of them about market activity in the New York Produce Exchange?

A It would have been the other way around, that they would indicate if they heard something that they thought would be of importance to me.

Q I see

Mr. Klein, duirng 1963 were you familiar with the volume of trading taking place on the New York Produce Exchange?

A Just in a very general way. I did not know the volumes of what was going on transaction to transaction at all.

Q I'm talking about the total volume, say week to week or month to month.

A No, I was not familiar with it.

Q Did you know that the volume of trading was increasing during 1963?

A I knew that there was more trading in 1963 than in, say, three or five years before that, but I did not know what the amount was.

THE COURT: I think we ought to take our break.

MR. HARRIS: Fine, your Honor.

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(Recess)

(In open court; jury present)

DIRECT EXAMINATION CONTINUED

BY MR. HARRIS:

Q I take it, Mr. Klein, that during 1963 you did not read on a regular basis the government publications showing volume of trading on the New York Produce Exchange?

A No, I did not.

Q Is it also a fair statement that you did not instruct Mr. Forti or Mr. Fornari or anyone else at Bunge to keep you particularly apprised as to volume of trading?

A Not in specific words to keep me apprised of the volume, but to keep me apprised of anything unusual which would be their job.

So the burden was upon them to advise me of anything unusual.

Q I understand.

Durihg 1963, Mr. Klein, did you keep yourself apprised of what the open interest was on the New York Produce Exchange?

A No,I did not.

Q Did you know during 1963 that the open

interest was increasing, Mr. Klein?

A I had a general idea that it was increasing. I wouldn't have known what it was.

Q I take it again you did not follow the government publications that came out that indicated what the open interest was?

A No, I did not. Again, Mr. Forti and Mr. Fornari would, and it was their obligation, to tell me about it if it was unusual.

Q Did you know on November 13 what the open interest was at that time?

A I didn't know exactly what it was, no.

Q Did you know during 1963, Mr. Klein, that the volume of deliveries takingplace on the New York Produce Exchange was increasing?

A In a general way, yes.

Q How did you learn about that, sir?

A I believe through Mr. Forti or Fornari. I don't recall which one told me.

Q Do you recall when they told you this?

A No, I can't really recollect now.

Q Do you recall in what connection they told you this information?

A Only in relation to the tempo of business

which was occurring generally during 1963. It was -- everything was very active.

Q Were you aware during 1963, Mr. Klein, of who the large traders were in cottonseed oil futures contracts?

A Not really.

Q Were you aware in 1963, let's say prior to November 1963, of whether Allied Crude was a large trader in cottonseed oil futures contracts?

A I knew they were because of my knowledge of what Bunge was doing and I knew that they were dealing in cottonseed oil futures, yes.

Q You say, "What Bunge was doing."

You are referring to the transactions --

A To the activities that Mr. Forti and Fornari and Bunge were doing with Allied Vegetable Oil.

Q Were you aware during 1963, Mr. Klein, that there was an increase in concentration on the long side of the cottonseed oil futures market?

A I was aware of it on November 13.

Q What about before November 13?

A No.

Q I take it you did not follow the monthly government publication on commitments of traders in

cottonseed oil?

A No. I already indicated that Mr. Forti and Fornari may have been following it, but I didn't.

Q And you don't recall them mentioning that fact to you, that the concentration was increasing?

A No.

Q Were you aware, Mr. Klein, during 1963 that the number of ex-pit transactions and the number of contracts involved in these ex-pit transactions was increasing on the New York Produce Exchamge?

A I didn't know it was increasing. I knew that they were occurring. I didn't know they were increasing.

Q How did you know that they were occurring, sir?

A Through Mr. Forti and Fornari's periodic discussions with me or memoranda concerning the transactions which Bunge took with Allied.

Q You are referring to the ex-pit transactions between Bunge and Allied that related to the registered warehouse receipts, sir.

A I'm referring to the transactions on the registered warehouse receipts, yes.

Q Mr. Forti and Mr. Fornari kept you apprised

of those transactions in which Bunge was engaging them, is that correct?

A Yes, Mr. Forti and Fornari wrote me memoranda the entire time on the various matters which concerned Allied, and I would obtain the information, maybe not simultaneously, but as this went along, I would read the memoranda.

Q Did you always have conversations with Mr. Forti and Fornari about the subject matters raised in the memoranda?

A I would have conversations particularly as it related to the memoranda of financing which we did with Allied.

Q Did you have any conversations with Mr. Forti or Fornari during 1963 as to the effects if any of this ex-pit trading on the cottonseed oil futures market?

A No, I did not. The discussions really related to the registered warhouse receipts and my interest was to know whether we, Bunge, were fully hedged on it, and it was in that relation that they would speak to me.

Q In other words, you were more concerned with the relationship between Bunge and Allied in these conversations than you were with the New York Produce Exchange?

A Well, there was, as far as I was concerned, the ex-pit transactions were not anything very unusual or surprising. As far as I was concerned, I saw nothing unusual about them.

Q Had Bunge engaged in similar ex-pit registered warehouse receipt transactions prior to 1963?

A I believe we had, with Allied.

Weinstein, head of the clearing association, had written two letters to Mr. MacDonald, president of the produce exchange concerning market conditions in the cottonseed oil futures market?

A No, I was totally unaware of that, and am.

Q Were you aware during 1963 and prior to the bankruptcy, that Mr. MacDonald, Mr. Berg, and Mr. Fashena met with Mr. Weinstein and Mr. Boyer of the clearing association on September 23, 1963 to discuss, among other things, an imposition of a scaleup margin?

A I was unaware of that.

Q Did you speak to Mr. MacDonald during 1963, other than at board meetings?

A I only spoke with Mr. MacDonald at board meetings. I have no recollection of speaking to him otherwise.

Excuse me. You asked as to Mr. MacDonald?

Q Yes. You know him?

A Yes.

Q Mr. Klein, do you recall a meeting that took place on the morning of November 13 at Bunge's offices, with Mr. DeAngelis?

A I do.

Q Do you recall who was present?

A I was present, Mr. DeAngelis, Mr. Kenner, Mr. Forti, and Mr. Fornari.

Q Do you recall what the subject matter that was discussed at the meeting?

A The purpose of the meeting was Mr. DeAngelis wanting to talk me into further financing on a larger scale for the coming year, for the coming crop year, which started about that time. In other words, that is when the harvest comes in.

So he came in for the purpose of convincing me to do that, or us to do that, and at thattime Mr. Kenner asked him a number of questions concerning his position because we were very interested to know whether Mr. DeAngelis was long futures, was speculating, or whether he was -- what his position was.

So during the meeting he indicated thathe was 6000 to 8000 contracts lone futures between the New York Produce Exchange and the Chicago Board of Trade. That was the figure that I remember his giving to us and we were, Mr. Kenner was unable to find out from him any more; or any specific breakdown.

So the meeting really dealt with that particular aspect and his trying to sell us on financing him to a greater extent.

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Q You had been concerned to know whether Mr. DeAngelis was speculating or hedging, as far back as the year before that, isn't that true, in September of 1963?

A We were generally trying to find out what his position was, and Mr. DeAngelis was always very reluctant and in general gave us only partial information. So we never really knew his position.

Q Do you recall what the reason was why you wanted to know whether Mr. DeAngelis was hedging or speculating?

A Well, we felt that we wanted to know if he was very much on the long side, whether he had business prospects in mind, whether his export -- whether the export outlook thathe was always speaking to, we knew about; but we didn't know much about his domestic business. So Mr. DeAngelis gave us a picture concerning his domestic buyers and concerning his export buyers which showed us that he continued to have a very large cash business.

So we were trying to fill in the gaps, and one of them is to know whether he is long or short or whether he is able to sell the cash oil which he had, not only in export, but otherwise.

Q Isn't it fair to say that you were also concerned

to know because if Mr. DeAngelis was in a speculative position, then he would be -- and if the market went against him, then he might be in financial trouble.

A That is correct, too.

Q And in 1962, and I am speaking of September, 1962, Mr. Klein, isn't it correct that Mr. DeAngelis forwarded to you some materials showing his futures position in soybean oil and cottonseed oil and his cash position in those commodities?

A I don't recall, without looking.

Q Let me show you Plaintiff's Exhibit 98 in evidence, which is the letter, and then Exhibits 92A, 92B, 92C, and 92D, which I believe were attachments to the letter, and see if that refreshes your recollection.

A I remember the letter. I should add that when a letter came from Mr. DeAngelis about his position or concrning anything that DeAngelis was doing with us, it always was sent by me to Forti or Fornari for their knowledge and for their recommendation. So I believe when I got this letter I read through it very quickly. I don't recall looking at the attachments.

Q Do you recall the fall of 1963, Mr. Klein, that Mr. DeAngelis forwarded to you some financial

since we were already in the rather high figures with Allied.

Q That would have been prior to the meeting with Mr. DeAngelis, I assume?

A I would think if I spoke with him it would have been on the 12th, but I just don't recall.

Q Do you recall, sir, how the meeting with Mr. DeAngelis ended on the 13th?

A I don't know how it ended. I think he was pleading for more financing, in the light of his various requests for more financing.

Q Maybe I wasn't clear. How were things left on that subject, at the end of the meeting?

A I would say up in the air.

Q Do you further recall, sir, on November 13th, a little later in the day, receiving or being contacted by Mr. Harry Anderson?

A I do.

Q And do you recall how you were contacted by Mr. Anderson?

A Well, I believe he phoned me and asked if he could come over.

Q Did he come over?

A He came over and came to my office, indicated --

we had, I believe, a bit of a general talk about business in general and the Russian business, and I think he then told me that the reason he wanted to see me was to make me aware that he felt that DeAngelis had a large holding of futures contracts on the Produce Exchange and that he was very concerned about it; that he felt that DeAngelis might have a corner.

Q When you say the meeting started off with some general business discussion, do you recall --

A In general remarks about business conditions; the Russian news was very much in the highlight. It had nothing to do with the oil business, really.

Q Did it have anything to do with Merrill Lynch's activities on behalf of Bunge as a broker?

A No, we didn't discuss that.

Q Did Mr. Anderson tell you where he had learned this information from?

A I don't recall what he said on that. He just said he had learned it.

Q What did you say, if anything, after Mr. Anderson told you this information?

A I said that I thought we should talk to the gentlemen in our Oil Department and we went from my office over into the conference room of our Oil

Department, and I believe met with Mr. Forti. I can't recall if Mr. Fornari was present or not. I think at a later stage Mr. Brasmer came in for a while.

Q What transpired at this time?

A Mr. Anderson repeated this concern about-the size of Mr. DeAngelis' position; that this rumor that he had heard, and we discussed it and said that we felt the best thing to do was to try to establish what the position was, and bring the matter to the attention of Mr. Berg, who was the secretary of the Exchange and generally the person very familiar with matters concerning the Exchange.

So before we left, I think we had a brief discussion with Mr. Brasmer on markets as it related to whether the Russians were going to buy or not. And Mr. Forti and I and Mr. Anderson went over to Mr. Berg's office at the Produce Exchange --

Q Let's stop there, because I will get to that in a minute. I want to follow up on the conversations that took place at Bunge's offices. Did somebody call Mr. Berg from Bunge's offices, as you recall?

A I don't recall.

Q During these conversations with Mr. Anderson when you were at Bunge's offices, either your own

office or in the Oils Department, did you or anyone else from Bunge tell Mr. Anderson that you had met with Mr. DeAngelis earlier that day?

A No, we did not.

Q Did you tell Mr. Anderson that you had any information concerning Mr. DeAngelis' futures position?

A No, I did not. We did not. I felt that the information which we had was very fragmentary and I thought we should try to establish what the position was through the Produce Exchange.

Q You mentioned Mr. Berg. Were you in regular contact with Mr. Berg during 1963?

A He would periodically call up concerning meetings or he would call up concerning signatures, or he would call up about the job I was working on, which related to the merger of the New York Produce Exchange with the Cotton Exchange.

So periodically we would have discussions with the matter that I was concerned with at that time.

Q Did you ever call Mr. Berg to inquire as to the conditions on the cottonseed oil futures market during 1963?

A I didn't call Mr. Berg. I think that the conditions on the Exchange which I would hear about would

be unusual market conditions which I would hear from Mr. Forti or Fornari. I didn't call Mr. Berg about it; and he didn't call me on that specifically.

Q I think you were saying when I stopped you that you and Mr. Anderson and Mr. Forti went over to see Mr. Berg.

A Yes. We went there from our office and Mr. Berg was told by Mr. Anderson the same news which -- the same rumor which he had told us about, and Mr. Berg did not in that meeting do any more than listen to what had been said, and say that he was looking into it and the meeting ended without any particular conclusion having come out of it, or any new fact having been developed, except to bring Mr. Anderson's concern to the attention of Mr. Berg.

Q Mr. Klein, you knew, did you not, on November 13th that Bunge Corporation was holding as a broker for Allied 2,500 soybean oil futures contracts, and 1,000 cottonseed oil futures contracts, didn't you?

A Yes.

Q Did you tell either Mr. Anderson or Mr. Berg on November 13th that you knew that DeAngelis had at least 3,500 contracts in those two markets because you were holding them?

A No, I would have assumed that Mr. Berg or the Exchange or someone would be aware of what we held on their Exchange, and I did not discuss DeAngelis' position with us.

Q I take it you didn't discuss that with Mr. Anderson either?

A No, I [illegible]

Q Was any decision made at Mr. Berg's office or before you went to Mr. Berg's office, as to what to do?

A I don't recall any decision and I'm not sure when the decision was made to call the meeting of the Board. I believe that that decision was reached subsequent to our meeting and that I received a call the next day, but I'm just not certain any more when that happened.

Q Do you recall any discussion on the November 13th about having Mr. Berg call the CEA to find out the position that Allied had on the cottonseed oil futures market?

A I believe that Mr. Berg said he was going to get in touch with the CEA but I really just don't recall the details of it. I know it was a very short meeting and not much came out of it. That is my recollection.

Q I take it you don't recall that while you

Q I take it you attended the Board meeting of November 14th.

A I did.

Q That was the meeting where a Control Committee was appointed; do you recall that?

A That is correct.

Q Do you recall whether Mr. Anderson spoke at the Board meeting?

A I believe he -- I believe he was the one who spoke. I have a very hazy recollection of the meeting, but I think he was the one who described a predominant position in cottonseed oil, in the cottonseed oil market of one account.

I remember that the name Allied was never mentioned.

Q Did he say how predominant the position was?

A I don't recall the numbers. I think it was-- that it was a predominant position. I just don't remember.

Q Did anyone ask Mr. Anderson who he was referring to?

A I think everyone present knew.

Q Do you recall Mr. Andersnn telling the Board at the meeting of November 14th that he had spoken

to Mr. Caldwell, the head of the CEA, that morning?

A No, I don't recall that.

Q Do you recall Mr. Anderson saying that closing the market was about the only way out?

A No, I don't remember that.

Q Did you relate to the Board at this meeting of November 14th the information Mr. DeAngelis had given to you on November 13th concerning his position in futures?

A No, I did not.

Q Do you know what purposes the Control Committee was created for?

A The purpose was to establish who held what position on either side. There was a lot of discussion about how this should be accomplished and who should do it.

There was a great deal of feeling among some of the people present that that information should be kept in confidence concerning their own position.

So the Control Committee selection was made up of people who were satisfactory to the various members there who wanted the information kept confidential.

Q Do you recall who was appointed to the Control Committee?

A I don't recall without refreshing -- memory refresher. I just don't remember.

Q Do you recall Mr. Berg being appointed?

A I just don't remember.

Q After the meeting, the Board meeting of November 13th --

A I would like to say on that that there were a lot of people proposed, and I can't remember who accepted and who didn't accept and who finally wound up on the Committee.

Q Fair enough.

In any event, at the time -- I'm talking about the afternoon of November 14th -- after the meeting you knew; is that correct? After the meeting was over, the Board meeting, you knew who was on the Control Committee?

A I was aware of it, yes.

Q Did you at that time go over and inform those people as to the information Mr. DeAngelis had given you as to his position?

A No, because I felt that the members of the Control Committee would very quickly find out the actual specific facts for the entire DeAngelis position, which is really what was crucial.

Q Did you know at that time that the Control Committee planned to send out a letter to the clearing members asking them to submit this information as to the positions that they were holding for customers five days later?

A As to what?

Q Let me restate that.

Did you know on November 14th when you were at the Board meeting or the end of the Board meeting that the Control Committee planned to send out a letter to all clearing members calling for the clearing members to forward to the Control Committee on November 20th the position of their customers?

A If that was discuss at the meeting, I was aware of it. I don't recollect today.

Q Do you know whether the Control Committee ever held a meeting during the period November 14th to November 20th?

A I don't know. I left the country that weekend and I don't recall what--I don't recall now what happened in the next days.

Q Just to get the dates straight, we have a large calendar here as you can see for November 1963.

A Yes.

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Q Take a look at the calendar.

Do you know which day you left the country?

A I left on Sunday, the 17th.

Q Do you know when you returned?

A I returned on the evening of the 20th, after hearing from my office about the bankruptcy. I came back early from a trip.

Q Mr. Klein, do you recall Mr. MacDonald stating at the meeting of November 14th that everyone in the trade was well aware of the concentration of the open interest and the unusual type of trading that has been going on and that the old time traders have never seen anything like this before?

A I don't recall it now. I assume if he said it --

Q Let me see if I can refresh my showing you the fourth page of Plaintiff's Exhibit 12-H for identification.

A I read it. I don't recall now the specific words, but I assume he must have said it if it says it here.

Q I take it then you don't recall your reaction?

A I don't recall the specific statement, no.

Q Do you recall whether anyone disagreed with Mr. MacDonald's characterization of the market?

MR. O'DONNELL: Objection, your Honor. If he can't recall the statement, how could he recall if anybody disagreed with it?

THE COURT: That is true.

MR. HARRIS: I'm attempting to refresh his recollection by trying to probe if there was a discussion. It might trigger a recollection. This was the last of the questions on that, your Honor.

A I don't remember.

Q Fair enough.

Mr. Klein, on November 15th before you left the country did you speak to Mr. MacDonald or Mr. Berg or Mr. Anderson to find out what was happening with respect to the items discussed on November 14th at the Board meeting?

A I don't believe I did. I think I was readying myself for a trip where I was presenting our capital budget, and I was preparing myself for that. I don't recall speaking to the gentlemen.

Q Mr. Klein, do you recall whether you spoke at all at the meeting of November 14th?

A I only remember speaking in relation to some nomination for the Control Committee concerning the people that should be appointed.

Q What did you say in that connection?

A Well, there had been quite a discussion as to who could be on the Committee, and I suggested a gentleman who I thought would be acceptable to all because he wasn't directly involved in any of the different -- with any of the different traders.

Q Who was that, sir?

A That was Mr. Salmonowitz who was with an inspection outfit and, therefore, not directly involved with any one company.

Q Mr. Klein, do you recall talking to anyone at Bunge during the year 1963 about what took place at those Board meetings at which you were present?

A No.

Q I take it, Mr. Klein, that during the fall of 1963 you knew in a general sense what Bunge's position was in cottonseed oil futures and soybean oil futures?

A I knew whether we were long or short. I did not know what our position was in detail at that time or any other time.

Q Did you have any idea whether it was a large position or a small position?

A I was always concerned with our position in

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with Mr. Forti and Mr. Fornari about Allied.

THE COURT: I think that is a waste of time.

The only probative value of that agreement is the fact that such a proposition was made. We know that it wasn't put into effect and, therefore, it seems to me what discussions he had about it, so forth, are not pertinent to this case.

I want you to move on to some other topic.

Q Do you recall, Mr. Klein, whether in connection with the futures contracts that Bunge did hold for Allied, whether Bunge got a hedge letter from Allied?

A I don't know. I would have to repeat that Mr. Forti and Fornari were the two vice presidents in charge of the business. I did not follow any mechanical, administrative trading details ever in this thing.

Q I take it then you had no knowledge during November 1963 and prior to your departure from your trip -- I think you said on November 17 -- as to whether or not Allied was meeting margin calls in connection with the account it had with Bunge?

A I was not aware of itprior to my trip. It was a business trip to South America.

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Q Do you recall at the meeting with Mr. DeAngelis any discussion about the fact that Mr. DeAngelis thought that Bunge was trying to run his business and that he didn't want Bunge to do that.

A I don't think this was discussed at the November 13 meeting.

THE COURT: Again, what difference does that make? What difference does that make to your case, Mr. Harris?

MR. HARRIS: Your Honor, we think that Bunge was fully apprised -- if not fully apprised, had been on notice as to Allied's financial condition to the fall of 1963.

THE COURT: Go to something else --

MR. HARRIS: No, because this relates to the knowledge they had --

THE COURT: I'm sorry, I disagree. Let's move on. If they watned to run their business, what difference does thatmake in terms of the issues that are before this court in regard to this case?

MR. HARRIS: I think it relates to Mr. Klein's duties as a board of manager on the produce exchange, your Honor, because he is regulating this business ane he is involved in it.

Q At the time that you are talking about just now, Mr. Klein, you mentioned that your soybean oil and cottonseed oil positions were net even.

A We were long one net and short one net. I don't remember at this time which was which. But all oils are looked upon as a unit and you can't hedge oils that are not cottonseed oil or soybean oil in anything but cottonseed oil or soybean oil. There is no hedgeable market. And as commodity traders, the main aim of a company is to watch, or let's say my main aim is to see where we were net, and we did not want to be net long.

Q Let me show you Plaintiff's Exhibit 172 for identification, Mr. Klein, and ask you if that document refreshes your recollection that with regard to the futures side now, of soybean oil and cottonseed oil, Bunge had a short position on the close of business of November 14th?

A What you have to do -- I don't recall seeing this particular sheet. I am emphasizing to you that all oils, whatever the variety, move in unison, and we always look at all oils as a unit. And no one who trades in oils would ever say that they didn't move in unison, so that is how we looked at it.

In other words, I am explaining to you my

recollection of our position at that time, as being overall long. And we made a decision which, of course, I left, talked it over with Mr. Brasmer because he was the main trader in our company, who also gave advice as to all positions, that we would moderately sell some oil with the idea of bringing Bunge's overall fats and oil position to zero, and we sold very moderately over the next couple of days.

Q I appreciate that, but I don't believe you answered the question, which was simply do you recall whether or not -- by just looking at Plaintiff's Exhibit 172 for identification, would that refresh your recollection that Bunge was net short in futures on the close of business of November 14, 1963?

A Well, I see we were -- you are talking about only one item. I see we were long 7,896 tons of cocoanut oil.

Q Is that futures, sir?

A Futures and cash always go together. One is a hedge for the other. You have to allow me to explain our business.

In other words, I can answer the question that it says here that we were futures short this, and we were futures short that. But that is just a partial question.

Q Did you inquire as to whose checks it was?

A They said they didn't know at that point. They had just heard about it. I'm trying to give you the sequence of events as I recall them.

On the next morning, which was November 19th, I received a call from a man who introduced himself as a Mr. Teiger of Ira Haupt and he asked me whether I wanted to buy a large amount of cottonseed oil or soybean oil contracts. I can't recall which it was. I was rather amazed to get this call, and asked him why he was calling me.

He said, well, he just thought he would call me.

I said, "I don't deal in contracts. Why don't you call our office in New York."

We had a very important connection. It was by radio with this trading back and forth. So we were kind of shouting back and forth. That was the extent of that call. I did not know this Mr. Teiger and I did not know anybody at Ira Haupt. This is the first time I had ever had any contact by anybody in Ira Haupt, first and last.

Q If you finished with that phone call, I would like to ask you some questions about that.

A Please.

Q Did Mr. Teiger tell you why he was calling you, since I gather you didn't know him? Did he introduce himself and tell you --

A He said exactly what I have told you and no more, and I certainly cut him short and told him to call the New York office that I wasn't a trader in either soybean oil or cottonseed oil.

Q Do you remember telling him to call Mr. Kenner?

A I might have told him Kenner or Brasmer. I don't remember which I told him.

Q Do you know whether he did call the New York office?

A I don't know.

Q Why don't you tell me about the next contact.

A The next thing I heard was I got a telex from the New York office sometime on the 19th informing me that Allied had gone -- had filed for bankruptcy, and I don't recall the rest of the telex.

I made arrangements on the first plane I could to go back to New York. I interrupted a two-week trip and came back because communications were very

difficult by telephone.

I certainly wanted to see what had happened and what affect this would have both on Bunge and the Exchange.

Q Just one thing.

Do you recall approximately what time of day you received this call from Mr. Teiger?

A Very early in the morning.

Q That was on the 19th?

A I mean, it was very early in the morning in Buenos Aires. I forgot even what time difference there was at that particular time of the year, but it's no more than one hour.

Q I see.

A I know I got it the minute I walked into the office, and I was the first one in the office there. So it must have been like, I don't know, before 9 o'clock.

Q I take it, Mr. Klein, that you returned to New York --

A I got in on the evening of Wednesday the 20th. It's a very long trip to Buenos Aires. There were only -- there was only one plane every 24 hours.

So it took me that whole day and part of the previous night to get back.

Q I appreciate that.

Because you were out of town you were not at the meeting of November 19, 1963 when members of

Q Did Mr. Forti at sometime during that week report to you on what had happened at the meeting of November 19, what happened subsequently?

A Yes, he did. Of course, I learned that the exchange had been closed. I was asked to ratify the decision, which I did. I thought it was a very courageous decision and one that I think was done very properly, and had I been there I would certainly have been in favor of it.

Q Did you learn at that time when you were ratifying the decision as to how the prices were established for the settling of the contracts?

A I was filled in more or less on it. I don't recall exactly how it went, but I was told by Mr. Forti more or less what had occurred.

I just can't remember the exact details.

Q Mr. Klein, do you recall that Bunge started dealing with Allied Crude in order to obtain a good source of supply of oil?

A I suppose one could say yes. That is one of the reasons.

Q I'm not trying to put words in your mouth, sir.

If there are other reasons, why don't you

A I must have. You know, it is not easy to talk in 1975 about something you knew in 1965 about 1959. That is 16 years ago.

Q I appreciate that --

A That this occurred. I think if you read through this thing you would find some other items that probably referred to this in another light. So I don't doubt that I said that at that time, and that no doubt was my view.

Q And your memory of course was better in 1965 of those events than it is today?

A I would think so.

Q Of course, Mr. Klein, there came a time when Bunge started loaning money to Allied, did there not?

A Yes.

Q Do you recall that your decision to loan money to Allied was based on Mr. Forti and Fornari's recommendation that Bunge's competitors were financing Allied and that Bunge would have to do so as well in order to get a large volume of the business.

MR. O'DONNELL: May I have an objection as to relevance, your Honor.

THE COURT: That objection is overruled. That may have some relevance. My problem with it is that

I think it was brought out that this was one of the reasons, at least, that was advanced by Mr. Fornari.

MR. HARRIS: That is true. I am trying to see whether Mr. Klein is aware of it, your Honor.

A I believe at the same time I testified about this and I think it is approximately the way you say.

Q Wasn't it your understanding at that time, Mr. Klein, and I'm not talking of the time you testified, but the time we are speaking of in 1960 or thereabouts, that the reason -- that you knew that the reason why Allied was dealing with Bunge in connection with these loans was because Allied had insufficient financial resources on its own and no access to bank lines of credit to obtain financing?

A Well, in order to do a business Allied didn't have the capital or the resources to finance the business that the whole purpose of dealing with us and other people, the other exporters, was because he needed financing in order to build up stocks which then could be used for export or for domestic business.

Q Isn't it also true that you knew at the time that he did not have access to bank lines of credit for this type of financing?

A I don't recall that I was aware of it.

Whether I was or wasn't, I just don't recall that.

Q Wasn't it obvious to you that Allied wouldn't pay higher rates of interest to Bunge and the other exporters if it could have gotten loans from banks?

MR. FRYER: I object.

A What I say is, I don't know whether they were also borrowing from banks.

In other words, I assume they would not have paid interest rates to exporters if they could have gotten all the bank lines they needed. But I don't know what their situation on bank lines was.

Q You knew the business with Allied eventually grew so large, do you not, that by 1963 there was a special subsection of the Oils Department that dealt with Allied?

A I'm not sure I follow you on that. If you mean that we had a gentleman by the name of Groeneveld who was following the accounting and all the matters relating to the documents and all that, yes. But I don't know that I would call it a subsection. It was part of the Oil Department.

Q Yes, I am saying it is a subsection of the Oil Department; Mr. Groeneveld, I believe, and Mr. Polakowski who dealt pretty much on a consistent regular

Q Do you recall discussing with Mr. Fornari in the spring of 1963 that these transactions with Allied involved so much oil that Allied was accumulating so much oil that if the price dropped, that Allied could be in serious financial difficulty?

A Would you repeat that?

(Question read.)

A I don't recall discussing it. It certainly is possible that if someone has a lot of stocks and the price drops, that they could be in trouble. But as I knew it, I believe Allied had had a relatively good period, and I knew of nothing adverse, and for that reason we built up our business with them again.

I mean, as a result of the discussions I had, we went along and we did a tremendous amount of business subsequent to May, which obviously does not show that in my mind was that somebody was in danger of going bankrupt.

Q You made sure in all this business subsequent to May, did you not, that Bunge was fully protected and secured? All of its loans.

A We always have tried to do that. In fact, that was Mr. Kenner's job, part of his job as an attorney to see that we were properly protected.

Q You recall that Mr. Fornari and Mr. Forti

MR. HARRIS: I will withdraw that.

All right. I will withdraw the question.

THE COURT: Mr. Klein approved these transactions.

Q Mr. Klein, do you know of any other arrangement that Bunge had with any other company of the size of Allied during that period which also guaranteed profits to Bunge in the same way?

A No.

Q Sir, I would like to show you Plaintiff's Exhibit 90 in evidence, which is a memorandum dated May 1, 1963 and ask if you recall this memorandum being forwarded to you in connection with the proposed resumption of loans to Allied after the zeroing out in March or April.

A Yes, I recall seeing it.

Q Would you please turn your attention to page 2, which is paragraph 5, and I would like to ask you a couple of questions about the material set forth in there. The first entry, paragraph A, says -- let me go back. Paragraph 5 said, "This," referring to the proposal set forth, "would enable us to, A avoid an open break with Allied."

Do you know what that refers to, sir?

Q You did know in 1963, did you not, Mr. Klein, Mr. DeAngelis was usually tight for money?

A He always was tight for money.

Q Did you ever make an inquiry either directly of Mr. DeAngelis or through Mr. Forti and Mr. Fornari as to what proportion of Allied's financing was being handled by Bunge?

A I believe that Mr. Forti and Fornari tried to find out what DeAngelis was doing with other people, but in general this was not something -- in general or specifically, this was not something he disclosed. He talked a great deal. He was a big name dropper about all the other companies, but he really never gave out his position or told us what he did with others in any form that one could get an opinion of the total picture.

Q I believe you told us yesterday -- I do not have the transcript -- if I'm repetitive, I'm sorry -- that from time to time you did get financial statements of Allied but you didn't rely on them?

A Well, we asked DeAngelis for a lot of different things concerning his business, including financial statements in an effort to know more about the company we were dealing with. We did get financial statements.

Q Did you rely on those financial statements?

(In open court; jury present)

CROSS-EXAMINATION

BY MR. FRYER:

Q Mr. Klein, how long have you been in the agricultural commodities business, sir?

A Since 1940.

Q To what extent has your experience in that business been in connection with oils such as cottonseed oil?

A Only since 1958, at which time I was in the management of Bunge and the oil department was part of the department which I supervised.

Q To what extent did your experience included futures trading?

A I personally did not deal in futures. I was, let's say a supervisor of people who were traders, but I was not a trader myself. I had not been a trader myself.

Q Did Bunge have other departments in addition to the oil department?

A Yes, it did. It had the gain export end and the grain domestic end. We had a department called the burlap department, we had a department called the chemical and metal department.

Q In 1963, do you recall how many employees were in theoil department?

A Approximately 40.

Q Do you recall in 1963 how many total employees Bunge had?

A Approximately 1200.

Q Do you recall approximately what percentage of Bunge's overall business was made up of oil department business?

A Roughly 15 per cent.

Q Is it important for Bunge's business that there be oil futures markets?

A Certainly. It's a very vital part to have futures markets, since we could not exist without hedging our purchases and sales. We would be exposed to a great many market risks, and it's a very vital part.

Q In 1963 was it important to Bunge that there was an orderly cottonseed oil futures market?

A Yes.

Q In 1963 did Bunge receive various printed reports from the Department of Agriculture concerning futures trading?

A I would say we received all of them within the office to the officers concerned.

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Q I believe you told Mr. Harris that you were elected to the board of managers of the produce exchange as a representative of the grain trade. Was any part of the produce exchange's business connected with the grain trade, in 1963?

A A portion of it was. I believe the inspection service of the board of trade on grain, there was still discussions between people on cash markets; but basically the only futures commodity traded was cottonseed oil.

Q How long had you known Mr. Berg, who I believe in 1963 was themanaging director of the produce exchange?

A Since I went on the board of managers in 1959.

Q Had you had occasion to discuss with Mr. Berg any aspects of the business of the New York Produce Exchange in 1963 or prior thereto?

A Over the period of four years, I had quite a few discussions with Mr. Berg, since he was the -- let's call it the executive director of the exchange and a very knowledgeable man,and he would come to me with various matters that he would want an opinion on, or he would discuss with me some matters, as I alluded to yesterday, concerning the merger with the cotton exchange. I

Q Can you recall any other members of the Board whom you regarded as knowledgeable concerning cottonseed oil futures trading?

A I would say Mr. Rehders, Mr. Preston, Mr. Crofton are three that come to mind.

Q I believe Mr. Harris asked you about the amount of time that you were out of your office in 1963. I don't recall that you stated the number of days or the amount of time.

A I very roughly added up the days, and it comes to something over five months.

Q I assume when you got back to your office that your work had piled up in the meantime?

A It certainly had.

Q Were there any major projects in 1963 that engaged your attention?

A Well, apart from running a business which makes one responsible for all banking, Government contacts, talkingto all the various managers, there were two major items during the year; one was our capital expansion program in the midwest of building grain elevator receiving stations, through the better part of the midwest, a very large program, which I personally was involved in; and the Russian business that I

alluded to, starting in September.

Q Was your attendance at Board meetings in 1963 unusual in terms of the number of times you had attended in prior years?

A I had a better attendance in prior years.

Q In 1963 did anyone ever express any concern to you about the cottonseed oil futures market, including anybody at Bunge or anybody outside of Bunge?

A No, none of the other members of Bunge who were on the Produce Exchange, members of the Produce Exchange, nor anyone at Bunge expressed any concern. The first concern, if you wish, occurred on November 13th when Mr. Anderson came to my office.

Q When did you first learn that Allied's futures position actually was as of any particular time in November of 1963?

A I don't believe I ever learned the position of Allied; in fact, I didn't except for DeAngelis mentioning the 6,000 to 8,000 contracts between the two exchanges. So prior to the bankruptcy I was not aware of it.

Q Do you recall what Bunge's total volume of business was in 1963?

A In excess of one million dollars.

Q Is this information and other information about Bunge's business confidential?

A Pardon me?

Q Is the information as to Bunge's volume of business in any particular year a confidential matter?

A Well, we don't advertise it. It is not something we announce, but we certainly would tell someone.

THE COURT: It is certainly not confidential 12 years later, anyway.

Q One last question.

As the president of Bunge do you or did you in 1963 get involved in the day to day details of all aspects of Bunge's business?

A I obviously could not and never did during that year or prior years. I was the chief executive officer of the company, with a great many administrative and other duties. So I did not get into the day to day business.

MR. FRYER: I have no more questions.

MR. O'DONNELL: No questions, your Honor.

MR. MINNEROP: No questions, your Honor.

MR. LIMAN: I have none.

MR. HARRIS: I have some, your Honor.

A Yes, that is correct.

Q Did you ever discuss the condition of the cottonseed oil futures market with Mr. Vogel during 1963?

A No, I did not. Mr. Vogel was, as I was, a member of a grain company primarily and Mr. Vogel and I did not do very many discussions outside of a Board meeting for anti-trust reasons. We never met.

Q I believe you indicated that you knew Mr. Fashena during 1963?

A I did.

Q Did you ever discuss druing 1963 the condition of the cottonseed oil futures market with Mr. Fashena?

A I think that the answer is no, but I must say that the point of the Board of Managers was that there were a lot of very competent people on the Board who knew about the cottonseed market. I was not an expert in it. My duties were assigned to by me the president or by another officer, so I acted in the capacity as assigned to me, and for me to discuss the cottonseed oil market would not have made the sense as for Mr. Forti or Fornari or the other members of Bunge who were members of the Exchange who did discuss it in the appropriate committees, and those committees

then made recommendations to a Board who was made up of representatives or various segments of the Produce Exchange.

So we really were the affirming body, not the people who would start talking about something which we knew not very much about. We didn't know the -- at least I didn't know the mechanics of the cottonseed oil market.

Q I think you made one mistake in your answer.

I think the record is clear that Mr. Fornari was not a member of the New York Produce Exchange in 1963.

A Well, I believe Mr. Forti was and then Mr. Fornari was. I don't know where one left off and the other one took up.

Q Did Mr. Forti tell you during 1963 that he had discussed the condition of the cottonseed oil futures market with Mr. Fashena?

A No.

Q Did you discuss the condition of the cottonseed oil market during 1963 with Mr. Anderson prior to November 13th, sir?

A No.

Q Did Mr. Forti tell you during 1963 that he had

In other words, in the oil end of our business we did not have facilities. In the grain business we owned -- we have 25 offices throughout the United States and about 100 elevators. Those are all manned with people, whereas we only had an Oil Trading Department.

So that is the reason for the discrepancy.

Q During the calls that you had when you were down in Buenos Aires I think you said in the last few days before the Allied bankruptcy, did anyone inform you that Allied -- when I say anyone, anyone from Bunge -- either in the call or the telex, I believe you said -- informed you that Allied had defaulted in posting margin on November 15th and continued to be in default on November 18th?

A I don't believe I had any information except what I have testified to before because communications were very difficult and I left as soon as I heard of the problem,and up to then I was trying to get my business done down there.

So I wasn't doing anything except take those calls that I mentioned.

Q Do you recall who from Bunge called you, sir?

[3757]

gr1

THE COURT: All right.

MR. BERNFELD: We believe Mr. Groeneveld's explanation ofthose pages are illuminating.

Our expert in part has reviewed this testimony and in part is relying upon Mr. Groeneveld's explanation as to how these transactions work because a dry piece of paper does not always bring this across.

THE COURT: The problem about that, the matter has been established.

In any event, I will allow you to read page 537 to 539. I will allow you to read pages 681, 682 --

MR. BERNFELD: Is that the second page 681 entry, your Honor?

THE COURT: It follows 537. I will allow you to read in that same book the 1149 that you bracketed. Okay, that's all that you can read in this part.

You can stipulate as to who Mr. Groeneveld is so we don't need that.

All right. We can proceed.

On the other volume I will allow you to read page 47 and 49. That's all.

MR. BERNFELD: Thank you, your Honor.

Your Honor, I would like to read a portion of stipulated fact 25 which notes that in 1963

gr2 "Groeneveld

Karl Groeneveld was the senior traffic manager of the oil department of the Bunge Corporation.

Turning first to the proceeding designated in 21A, May 5, 1964, page 47, line 13.

MR. LIMAN: Your Honor, just so that we have the record clear again, this is the proceeding to which nobody here was a party and it doesn't relate to anybody but Bunge.

THE COURT: What is involved relates only to transactions with Bunge or between Bunge and Allied.

MR. BERNFELD: Yes, your Honor. We are offering it with respect to both defendants Bunge and Klein.

"Q Now, let us take a typical transaction.

"Do you recall, Mr. Groeneveld, that sometime in November 1963, November 1, 1963, a treasurer's or a cashier's check of the Manufacturers Hanover Bank in the amount of $1,289,221.80 was brought to Bunge?

"A I do, sir. Without having the list of checks in front of me, I can't tell November 1st, but there were transactions in November and November 1st would have been one of the dates on which I personally received these cashier's checks of the Manufacturers Hanover Trust Company."

gr5 "Groeneveld

nature to Plaintiff's Exhibit 166 in evidence, but it's not the same --

THE COURT: I thought you wanted an explanation of how the ex-pit operates.

Read it for that purpose.

BY MR. BERNFELD:

"Q Looking at your calculations, Mr. Groeneveld, would you please tell the Court how you arrive at the price ultimately fixed for this transaction?

"A Certainly. Now, these transactions in registered warehouse reciepts, which are involved in the discussion, almost all included the feature that they were hedged. When we bought from Allied these warehouse certificates, we sold futures. When we sold the warehouse certificates, we bought futures.

"Now, the first item on this price calculation is the -- well, statement of the purchase -- no, of the sale of the futures and thepurchase of the futures and the resulting loss so far as Bunge was concerned.

"The next series of items --

"Q Before you leave that, Mr. Groeneveld, will you please explain to the Court how a loss was taken when you were simply selling these warehouse receipts?"

gr6 "Groeneveld 3762

MR. BERNFELD: Before you read the answer, just so I'm clear, your Honor, the answer stops in the middle of page 537, but it continues on. The rest of that selection goes through page 539. You indicated 537 before. I didn't want to go past it.

THE COURT: I can't tell from that.

MR. BERNFELD: I didn't want a repeat of what happened before, your Honor.

(Pause)

THE COURT: You are able to go to the end of that selection. That explains the transaction which I gather is what you wanted.

MR. BERNFELD: Yes, your Honor.

THE COURT: I think you know. In any event, you may do it.

"A The futures transaction, of course, as in this case -- a complete round robin futures transaction has either a profit or a loss. First one sells December futures, next one buys December futures. There is a loss there of 29 points and Allied, who was our counterpart in these ex-pit transactions, had the same gain, exactly the same gain.

"Q Will you proceed.

"A The next part of these calculations was the

various expenditure by Bunge Corporation in carrying the oil from the time we boutht it until the time that we sold it, plus a margin of profit equal to $2 a ton and 9/100ths of a cent a pound.

"Now, these costs, to enumerate them exactly, was as follows: Apart from the 9/100ths of a cent there was a round membership commission as this is stated here which, in effect, is the brokerage one pays to one's broker inthe future market.

"The next cost is the storage from the time that these certificates were bought until -- and you see it's changed from October 31, which I had first calculated, to November 1, which was the final day on which delivery was to be taken. Then the interest also from October 2 to November 1. Now, these various costs were .273 cents per pound.

"Now, in addition to that our cost, of course, was,as far as we were concerned, the loss on the futures of .29 cents a pound. So the total that we really had was a cost of .536, which included our margin of 9/100ths of a cent.

"This cost was added to the original purchase price or, as you can see, calling it sales price. It was a sale from Allied to Bunge, This is

why I used the word sale there.

"Now, the total of this original cost of 12.64, which is what we had paid, plus these charges that I have enumerated result in the sales price for this transaction, which you can see next shown on my sales slip."

MR. BERNFELD: The next entry is page 681, first lines 8 through 14:

"Q About how many registered warehouse receipt transactions took place between Bunge and Allied in the year 1963?

"A The entire year?

"Q Yes.

"A It must have been roughly about 40, I would say, maybe a few more."

elr1 "Groeneveld

MR. BERNFELD: Next picking up on line 21 of page 681:

"Q In order to clarify the record, Mr. Groeneveld, would you tell in all, including every type of transactions that took place between Bunge and Allied, approximately how many took place during the year 1963?

"A No, I am unable to give you even a statement.

"Q Was it more than 100?

"A Certainly.

"Q Was it more than 200?

"A You included loan transactions?

"Q Every type of transaction.

"A Several.

"Q Would you say it was more than 500?

"A Oh, my estimate is yes.

"Q Over 500?

"A I think so.

"Q NOw, in terms of transactions of any kind involving $1 million or more, about how many such transactions took place between Allied and Bunge during the year 1963?

"A You know, that is a hard thing to answer, but a very great many."

Turning next to page 1149, line 5:

Q 1959 and 1961, as opposed to between '62 and '63.

A All right. I agree with that.

Q Did you know who Mr. DeAngelis was at the time that you met him?

A I knew that he was associated with Allied Crude Vegetable Oil.

MR. LIMAN: Is it really relevant whether he knew, your Honor?

Q Did there came a time when either Continental or any of its predecessors came to do business with either Anthony DeAngelis or Allied Crude?

A Yes.

Q Do you recall when Continental started to do business with Allied?

A I believe it was in 1957, '58 or '69, I mean my previous testimony I'm sure will bring this out.

Q What was the nature of the business that Continental did with Allied at that time?

MR. LIMAN: I think it is clear that Continental didn't do business in '58. It started in '63. You are talking about the predecessor, aren't you?

MR. BERNFELD: Your Honor, I think that this is somewhat of a bogus issue. The Arrow-Continental

Q Do you recall the purpose of these visits?

A On a couple of occasions I went over there to visit their facilities. They had new plant facilities at different times, and we went over to look at some drumming operations, some refining operations, some new plant and equipment that they had at that time.

Q Do you recall whether you were ever accompanied by anyone else from Continental on any of your trips to Allied?

A Yes, I believe on one occasion Mr. Totah accompanied me. And on another occasion there might have been someone else, I don't recall.

Q Isn't it correct, Mr. Ferretti, that in addition to purchase and sales of various commodities, Continental's transactions with Allied included the financing of various commodities and fats and oils?

A Yes, sir.

THE COURT: Now we are in 1963?

MR. BERNFELD: We are in 1963, your Honor.

Q Can you explain the type of financing of Allied known as "Prefinancing"?

THE COURT: That will be the last question. We are going to adjourn a little early to allow Mr. Harris to make the record. So answer the question.

A Yes. Prefinancing I believe could be described as financing oil in the form of warehouse receipts where we would advance money to Allied prior to his delivery against a sale that he made to us or a contemplated sale that was in the works.

MR. BERNFELD: I shall stop here, your Honor.

THE COURT: All right. We will adjourn for lunch.

(Jury left courtroom.)

(Witness steps down.)

THE COURT: Are you planning to call Stafford, Totah and Worthington?

MR. HARRIS: No, your Honor. We have given Mr. Liman pages of Mr. Worthington and Mr. Fribourg that we expect to read. They are not very lengthy selections, your Honor. We are going to call Mr. Stafford, Mr. Totah and Mr. Vogel.

THE COURT: I see something, that Mr. Vogel is not going to be available on the 15th --

MR. LIMAN: I have spoken to Mr. Harris and I have suggested to him that he call Mr. Vogel Tuesday morning, because I think that he is going to be running out of witnesses, your Honor, by the end of

the week.

THE COURT: I am not going to have any holdup either. I follow what you want to do, but I have already indicated that I am going to keep out of this from here on out, with all the rigor that I can, any extraneous matters. This record is going to be pared. I think you better contemplate getting Mr. Vogel on the witness stand. I am not going to wait for him. If you excuse him and he goes to sea a little, I'm not going to hold the record open for him.

MR. LIMAN: He is going to be here Tuesday morning and I hope they put him on then.

THE COURT: That is up to them.

MR. HARRIS: I want to make two offers of proof, your Honor. First with regard to the pages from Mr. Forti's testimony which I wanted to offer both to impeach Mr. Klein's testimony, Mr. Klein being a defendant in this case that he had not spoken again to Mr. Anderson and also for the purpose of showing that Mr. Klein on November 14th had specific knowledge as to Mr. DeAngelis' position.

The pages are pages -- really page 505 of Mr. Forti, who was a vice-president of Bunge's testimony in an earier proceeding on February 22, 1966.

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Do you want me to read the page into the record? I could give it to the reporter and he could probably transcribe it.

THE COURT: I give you permission to spread it out on the record.

MR. HARRIS: The next, your Honor, is simply one other matter that came up this morning, with regard to the time Mr. Klein spent on the Board of Managers matters. We intended to put in proof to show that Mr. Klein spent little if any time on Board of Managers affairs and that is relevant to show the cavalier attitude Mr. Klein took toward the duties on the Board of Managers.

THE COURT: I told you my feeling on that. If he spent all the time you would have still tried to hold him liable if he was liable. What else?

MR. HARRIS: That is it, your Honor.

THE COURT: All right. We will recess until 2:00 o'clock.

MR. HARRIS: That is part of Mr. Forti's answer on page 505.

"I think, if I remember correctly, that subsequent to the meeting with Mr. Berg on the 13th, Mr. Anderson did get in touch with Mr. Klein, and I gave him

elrf 11

some more definite information as to what the extent of the DeAngelis' position was. Now, I have heard so many of these figures that I do not remember what was said then. I mean, much of this information has transpired after the bankruptcy; so I could not state now exactly what figure, what percentage was expressed at that time, except to the fact that in a way he gave a confirmation to us concerned that DeAngelis' position was a large one.

"Q And I take it Mr. Klein told you that Mr. Anderson had given this information to him; is that right?

"A Yes.

"Q Did Mr. Klein tell you that Mr. Anderson had told him where he, Mr. Anderson, had gotten the information from?

"A No, I don't know that."

(Adjourned for lunch.)

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AFTERNOON SESSION

2:00 p.m.

(In open court, jury present.)

J O H N F E R R E T T I, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. BERNFELD: (Continued)

Q Mr. Ferretti, I believe prior to the break you had begun to explain what was meant by prefinancing of certain Allied purchases.

Perhaps we could pick up there again and regain the thread.

A The prefinancing purchases would involve our advancing Allied money against warehouse receipts which would be advances, in effect, advances on purchases representing -- where we would have a warehouse receipt or a group of warehouse receipts, and we would finance the warehouse receipts to the extent of usually 90 per cent of the value of those particular receipts.

Q Were those field warehouse receipts or registered warehouse receipts?

A Field warehouse receipts.

Q Sometimes did you finance Allied at the rate

of 80 per cent of those receipts?

A It might have been. There might have been an instance where we financed that 80 per cent. There might have been an instance where we financed them at 95 per cent.

Q Wasn't this type of financing for the mutual benefit of both Continental and Allied?

A Yes, sir.

Q How did it benefit Continental?

A It benefited Continental to the extent that we had a -- in Allied we had a supplier where we had contracted to purchase oils from him for delivery at a subsequent date and he having the inventory -- we entered into an agreement, in effect, where we would prepay the inventory at approximately the time we concluded our deal with him, but we would finally pay him for the total amount due once he ladened the oil aboard the vessel in accordance with the terms of our purchase.

It would have been two weeks hence or a month hence, at a particular point in the United States at a particular port.

Q That is how it worked; is that correct?

A Yes.

Q That was the description of how it worked?

A Yes.

Q Maybe it is just that I didn't understand the response.

What was it that particularly benefited - Continental? What was the gain to Continental in providing prefinancing?

THE COURT: I don't see that that is pertinent.

I think we can assume for the purposes of the jury in this case that the parties believed it to be a beneficial commercial transaction.

MR. LIMAN: I will stipulate, your Honor, that that is so and we were benefited in that we did not have to pay for the oil where we entered into the contract, that we paid for the oil when it was delivered on to the ship, and in the interim between the time that we contracted to buy the oil and the time of delivery, we advanced up to 80 per cent of that purchase price, and, therefore, benefited to the extent we didn't have to pay everything at the time we contracted.

THE COURT: All right.

Q Was it customary for Continental to prefinance Allied purchases?

A Yes.

Q Was it customary for Continental to pre-finance purchases in the case of other suppliers?

A Not as a rule.

Q Do you recall testifying prior to this action specifically that it was not the case?

A It's possible, if I so testified.

Q Do you recall the amount of interest which Continental received on these prefinancing transactions?

A Yes. The rate was 6 per cent per annum.

Q Did it at some later point in time go up to 6-1/2 per cent?

MR. LIMAN: Are you talking about Continental in '63?

MR. BERNFELD: Yes.

A Not to my recollection. If you have some document which would evidence 6-1/2 per cent, it's very possible that that wasthe agreement that was made at that time.

Q On these prefinancing transactions were there any insurance premiums that anyone had to pay?

A Insurance premiums?

Q Yes, with respect to the oil involved represented by the field warehouse receipts.

A Yes, the field warehouse receipt covered a particular quantity of oil which had to be insured.

Q Who paid for the insurance --

A In many instances the insurance coverage was made by Allied through their brokers, in which case we would have a cover. In other words, we would have what amounted to a policy or an assurance, a policy from their particular underwriters, and there came a time where we were able to cover under our policy some of these warehouse receipts under our policy, under the Continental Grain Company policy.

Q Why did that come about? Why did that change come about?

A Well, we had an open policy and the amounts thatwe were financing at American Express at Bayonne were quite substantial, and we had an open policy where we had limitations, financing oils or other merchandise throughout the country, and we had limitations and we have somewhat favorable rates.

Having the insurance in our own house, we so decided to the extent that we could, we would insure a certain quantity of this particular oil that we were financing.

Q Do you recall when this change came about --

THE COURT: Mr. Bernfeld, I don't care when it came about.

MR. BERNFELD: Yes, your Honor.

Q On these prefinancing transactions, were there storage charges with respect to the oil involved?

THE COURT: We know there were, don't we?

MR. BERNFELD: We know only with respect to Bunge Corporation.

THE COURT: I'm sorry. That's true.

You may answer, Mr. Ferretti.

A Yes, there was storage charges involved, I believe.

Q And on these prefinancing transsactions with Allied, who paid for the storage charges?

A To the best of my recollection, with respect to the oil that was stored at American Express field warehouse in Bayonne, I think Allied paid the storage directly. If there were other instances where we financed oil at a different location, it is very possible, and I'm quite certain that we, Continental, paid for the storage and billed Allied.

Q You mentioned storage at American Express.

Did you receive the field warehouse receipts, American Express field warehouse receipts from Allied?

A Yes.

Q Do you recall whether prior to dealing with Allied Continental had the occasion to receive

identify his signature as his own and I am going to ask about it.

THE COURT: About what? The earlier transaction?

MR. BERNFELD: It relates to these figures, your Honor, which parallel the years that we reviewed the Bunge Corporation as to the amounts.

THE COURT: Why don't you ask him about the amounts?

Q Do you recall the total --

THE COURT: Why don't you show it to Mr. Liman, maybe he will agree that this -- I don't know -- all he wants are the figures, that those amounts were the --

MR. LIMAN: I can do it very simply.

BY MR. LIMAN:

Q Mr. Ferretti, you did prepare a schedule which has been given to plaintiff that showed the amount of the financings between Allied and Continenal Grain from March 1, '63 to November 18, '63, am I correct?

A Yes, sir.

Q And that document which has a total, is your Exhibit 64.

You also provided that information in an

interrogatory that you answered, that he showed you with your signature, am I correct?

A Yes.

MR. LIMAN: If you have totalled it up and come to this figure, I accept your representation that that is the cumulative amount for Continental for a period from March 1, and for North American for the period before. By way of illustration, if you made ten loans of a million, it becomes ten million on your schedule, not one million.

Q Withrespect to your personal recollection, do you recall that in 1960 North American Continental --

THE COURT: You don't have to ask him to recall. The point is, it be agreed to. If you want to read the figures to the jury, read them.

MR. BERNFELD: In 1960 the total dollar amounts of loans and financing, and this does not include registered warehouse receipt transactions, for 1960 was $6,984,000.

For 1961, it was $5,785,000.

I am rounding them off, your Honor.

MR. LIMAN: Good.

MR. BERNFELD: For 1962, $5,166,000.

elr6 Ferretti-direct [3801]

And for 1963, $34,803,000.

For a total of $52,741,330 for that period of time.

(Continued on next page)

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Q Just briefly, Mr. Ferretti, these loans we are describing just now also included outright loans to Allied, did they not?

A They included all loans.

Q But they had nothing to do with registered warehouse receipts transactions, isn't that true, these figures?

A That is true.

Q With whom did you have contact at Allied Crude during 1963?

A Principally with Mr. Ben Rotello.

Q Who was Ben Rotello?

A Mr. Ben Rotello was the controller, treasurer, some independent, of Allied Crude Vegetable Oil Corporation.

Q Did he handle in counterpart the types of problems that you handled at Continental?

A I imagine in part.

Q Were there any other Allied personnel that you had contact with in 1963?

A Yes. I had talked to Bert Rudoy, on occasion.

Q Who is he?

A Bert Rudoy assisted Mr. Rotello in some

of his functions.

Q Was there anyone else?

A Yes, I talked to Jerry Gittleman on occasion. There may have been some other people who I talked to in the absence of someone who I was trying to get at Allied, and maybe their assistants picked up the phone.

Q On what occasions would you talk to Jerry Gittleman?

A I might have talked to Jerry Gittleman with respect to some warehouse receipts or something like that.

Q What would be the purpose of contacting him?

A Maybe I couldn't contact Mr. Rotello, so I contacted --

THE COURT: I'm sorry. All the questions are going to have to lead some place.

Q Moving on, Mr. Ferretti, did you ever have any contact with a Ronald Platt, at Allied?

A Yes.

Q What was the purpose of the contacts with Mr. Platt?

A I believe Ronald Platt also assisted in part Mr. Rotello. Mr. Rotello had many functions and he had I imagine a number of people assisting him. One was Platt

and I think the other one was Rudoy. I'm sure he had other ones.

Q And of course you indicated earlier you met with Mr. DeAngelis, is that correct?

A I beg your pardon?

Q And you did indicate earlier you met with Mr. DeAngelis, is that correct?

A Did I?

Q I believe you did. Is that not correct, Mr. Ferretti?

A I don't know. Ask the Court --

Q Do you recall?

A I recall meeting Mr. DeAngelis, yes. But I don't think that is a question you asked me here.

Q All right, I'm sorry. You did meet with Mr. DeAngelis?

A Yes.

Q Do you recall on what occasion you met with Mr. DeAngelis?

A I met Mr. DeAngelis on two or three occasions when he came to visit us in our office, when he came to visit Mr. Totah.

Q Do you recall the date of that visit?

A No.

showing it, they wanted to show their facility.

Q Mr. Ferretti, do you know who initiated transactions between Continental and Allied on behalf of Continental?

A Yes.

Q Who would that be?

A It would usually be Mr. Totah.

Q Would it also be Mr. Stafford?

A Yes. Mr. Totah was -- when I say it was usually Mr. Totah, Mr. Totah was the head of this particular division, on occasion he would, I'm sure that he would negotiate a particular transaction and it was picked up by one of the traders. He would delegate his responsibility. Mr. Totah did not go into any detail with respect to these transactions, but I'm sure that he initiated some of them.

Q How did you learn who initiated the transactions on behalf of Continental?

THE COURT: I'm sorry, Mr. Bernfeld, that has nothing to do with this occasion.

MR. BERNFELD: I will move on.

Q Do you know who initiated the transactions with Continental on behalf of Allied?

THE COURT: I don't see what difference

that makes, if the transaction is what you are working with?

MR. BERNFELD: Your Honor, I want to establish the transactions. I also want to indicate the extent to which personnel in the Continental organization were aware of the business dealings between Continental and Allied.

THE COURT: I understand you are going to have to deal with the people from Continental who were involved. Ask them the questions. This man was removed, as I understand it, from the actual dealings with it. You are asking him who did it, and you are going to have to ask the person who actually did it what was involved.

Q Mr. Ferretti, do you know from whom Continental purchased their supply of soybean oil during 1963?

MR. LIMAN: Objection to the form.

MR. O'DONNELL: Objection to relevance.

MR.LIMAN: I think he means from whom did Continental buy soybean oil because --

THE COURT: I'm going to sustain the objection. If the question is rephrased, did they buy soybean oil from Allied, I will allow it.

Q Mr. Ferretti, did Continental buy soybean oil from Allied in 1963?

A Yes, sir.

Q Did Continental also buy soybean oil from other suppliers such as Central Soya in 1963?

A Continental bought soybean oil from other suppliers. Whether it was Central Soya or not, I don't know.

Q Do you know whether both Continental and Allied purchased soybean oil from the same suppliers?

A I don't have a list of the suppliers to Allied, so I really cannot say who were the suppliers to Allied. I could tell you who supplied us with the oil.

There was one occasion where we may have

financed them some warehouse receipts which might have given us an indication that Allied did buy oil from a particular supplier.

Q Do you know, Mr. Ferretti, whether Continental in 1963 was able to purchase its supply of oil, vegetable oil, more cheaply from Allied than from oil crushers themselves?

A Generally speaking, yes.

Q And it was these same oil crushers who supplied Allied with the oil; isn't that true?

A It is possible.

Q Do you recall whether there were approximately 15 or 20 or so major crushers of oil in 1963?

A I would say that is reasonable, yes.

Q And Continental purchased oil both from Allied and from crushers?

A Yes, that's right.

Q Do you know whether Continental was able to buy this oil from the crushers at a price that was the same or different from the price which Allied was getting?

A We were able to buy oil from a supplier at the same or different prices. That was your question, that is the answer, the same or different prices.

Q Isn't it true that Allied sold oil to Continental at a price that was cheaper than Continental itself could have purchased that same oil from the crusher?

A On occasion, yes.

Q Do you have any idea how it was that Allied could afford to do it at that price?

A No.

Q Did you ever consider that in 1963?

A Well, when we have purchases and tenders and whatnot, I never know -- I never can figure out what people have in mind when they offer cheaper than me or offer higher than me. When we offer or they offer, they may be offering against a particular position that they bought two days ago or two weeks ago or two months ago at a more or less advantageous position. You have different logistics storage problems. There are so many factors that go into this thing, it is not as simple as I think you would like it to be.

Q Mr. Ferretti, do you recall whether Continental ever acted as a conduit between Allied Crude and the eventual purchaser in an export transaction?

A Could you repeat that question, please?

Q Do you recall whether Continental ever acted as a conduit --

A A conduit?

Q Yes.

MR. LIMAN: I object to the form of that question.

THE COURT: I will overrule that.

A What do you mean by a conduit?

Q Was there ever a circumstance where Allied past oil through Continental which, in turn, was sold in an export transaction?

MR. LIMAN: Objection to the form again, past oil. Does he mean are there cases where we bought from Allied and sold --

THE COURT: Mr. Liman, I sustain the objection on the ground of relevance to this case.

What difference does it make, in any event?

MR. BERNFELD: Mr. Liman referred earlier, your Honor, to Plaintiff's Exhibit 64. Can we have a stipulation that the signature on these interrogatories is Mr. Ferretti's?

MR. LIMAN: Yes.

MR. BERNFELD: Okay, fine.

Q Do you recognize this list of finance

Q These loan transactions which were secured by field warehouse receipts, do you recall if Continental ever had a similar arrangement with a supplier other than Allied?

A We may have had in some previous years, but not in the years -- not that I can recall.

Q In fact, Mr. Ferretti, wouldn't it be accurate to state that over a 15-year period prior to 1963, other than the case of one or two small advances, there were no other ones?

A I would really have to go deep in order to say that I agree with you on that. 15 years prior to 1963 is -- I really don't recall.

MR. BERNFELD: Your Honor, may I show certain testimony to Mr. Ferretti to see if it refreshes his recollection --

THE COURT: 15 years prior to '63?

MR. BERNFELD: Whether in fact Allied was primarily the only supplier that Continental had such an arrangement with other than perhaps one or two minor instances over a 15-year period prior to 1963.

THE COURT: It can't be Continental for that period of time. He's indicated that insofar as '63 was concerned, I believe, that they didn't have

that arrangement; only with Allied, as I recall it.

MR. BERNFELD: I believe this point is probative.

I would like to read this testimony to Mr. Ferretti since he gave it prior to the trial of this action.

MR. LIMAN: It may be probative of some issue. I don't know whether it's an issue in this lawsuit, your Honor.

THE COURT: I agree with that.

MR. BERNFELD: May I indicate the lines of the testimony for the record, your Honor?

THE COURT: You can do that at 5 o'clock.

MR. LIMAN: I will stipulate, if it facilitates matters, what the witness has said, that to the best of his recollection in 1963 they didn't have this kind of arrangement with any other supplied in his division.

THE COURT: He's already said that.

MR. LIMAN: He said he can't recall whether or not they had it five years before.

What difference does it make?

Q Just boiling it down then, in essence, this arrangement was unique to Allied pretty much, isn't

that correct?

A That is an arrangement with Alliedthat we had.

Q Do you recall whether in February of 1963 Continental changed the form of the contracts which it used in doing business with Allied?

A I don't recall, but it's very possible.

Q Do you recall that there came a time when Continental began to include a provision known as a cross collateral agreement in its contracts with Allied?

A If it was done, I did it, yes.

Q Do you recall testifying prior to this action that this was a clause which Continental put in in the eventthat the agreement in question or any other agreement with Allied was not fulfilled according to the contract, that Continental would be able to dispose of the collateral, the oil, and apply the proceeds to any of the agreements which it had with Allied?

A If I said that -- I lost you a little bit. I was responsible for writing all of these agreements. If you show me something, I will be able to confirm it to you exactly.

Q All right. I will do that.

this.

Q Do you recall adding that provision to the agreement?

A Yes.

Q Did you do so because you felt that Allied was in poor financial condition?

A Certainly not.

Q Do you recall whether Continental had a provision in its financing agreements generally whereby Allied would have to give additional margin to Continental on loans which Continental made in the event that the market value of the oil collateral dropped?

A Yes, sir.

Q Was it your responsibility to follow up on prices to make sure that you received that collateral if prices deopped?

A Yes, sir.

Q Mr. Ferretti, could any officer of Continental Grain review Continental's books of account relating to Allied?

A Could any officer --

Q Of Continental review Continental's books of account relating to Allied?

A They could review them, but I don't know

that they would understand them.

Q But there were no secrets about it?

A No, no secrets whatsoever.

Q If they had any interest in it they could go to it and see what the nature of the business was?

A Absolutely.

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Q But there were no secrets about it?

A No, no secrets whatsoever.

Q If they had any interest in it they could go to it and see what the nature of the business was?

A Absolutely.

Q In connection with loans which Continental made to Allied during 1963 do you know whether Continental borrowed money from various banks and then used those funds to ma e loans to Allied?

A Well, during 1963 when we accepted, in a correspondence with our finance agreements with A lied, accepted warehouse receipts, these warehouse receipts were collateralized with the banks which we borrowed money. And against which money was used to pay Allied or to pay various obligations that we had.

Q And at that time Continental was borrowing money at the prime interest rate, is that correct?

A I believe so, yes.

Q Which was considerably lower than the rate at which they were loaning the money to Allied?

A I don't know what considerably is.

Q Do you recall what the prime rate was in 1963?

A No, I don't.

in fact give this testimony back in 1965?

A I have no disagreement that I gave that testimony.

Q Do, Mr. Ferretti, in both the instance of the use of the Gobel stock as collateral and in this oral option to repurchase, there were instances in the financing arrangements between Continental and Allied where there were understandings that were oral in nature, isn't that correct?

A In some instances, yes.

Q Mr. Ferretti, did you know in 1963 that Continental Grain was a member of the New York Produce Exchange and the Chicago Board of Trade?

A Yes.

Q Did you know in 1963 and prior to November 19 of that year that Continental used Merrill Lynch as a broker for futures transactions involving special orders?

A Yes.

Q How did you come to have that knowledge?

A How did I know?

Q Yes.

A I opened up the mail --

THE COURT: Please. I'm not interested,

Q Do you recall testifying in 1962, Mr. Ferretti, that all of the big major exporters were dealing with Allied in 1963?

MR. LIMAN: That was clearly excised and if you have to refer to an error in a transcript, your Honor, to --

MR. BERNFELD: If there was an error in the transcript, I didn't know about it.

MR. O'DONNELL: I object to the relevance. The subject is covered.

MR. BERNFELD: Your Honor, I accept the question as exports.

THE COURT: I don't think you should have any question about it. The issue is that I thought you were attempting to develop is Continental's relationship with Allied.

MR. BERNFELD: That is one of the things, your Honor. I also want to establish what was known that Bunge Corporation was doing business with Allied and this was known to people at Continental.

THE COURT: Whether it was known that they were doing business with them or not, we have established on the record that business was being done. I don't really know where we are going.

Q During 1963, Mr. Ferretti, were you aware that Continental and Allied were engaging in ex-pit financing transactions which involved warehouse receipts registered on the New York Produce Exchange?

A During 1963 we did engage in ex-pit transactions with Allied.

Q These were financing transactions, were they not?

A They were purchases which involved an ex-pit transaction which can be construed as being finance agreements.

Q Do you know how it came about that Continental and Allied came to do this ex-pit financing? Were you personally involved in the negotiations?

A I was not personally involved, except that I was certainly aware because -- I was not the direct trader in this thing, but I was involved with making contracts and with the execution and things like that.

Q Did you participate in the negotiation that led up to this --

A No --

Q -- this type of arrangement?

A No.

Q Did Mr. Liman or one of Continental's

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CROSS-EXAMINATION

BY MR. LIMAN:

Q Mr. Ferretti, you prepared documentation for ex-pits that correspond with your understanding of the item, is that correct?

A Yes.

Q And you find in those folders which have been makred as an exhibit, agreements between Continental and Allied for the purchase and sale of warehouse receipts, am I correct?

A That is correct.

Q We have been hearing a lot about ex-pit transactions. Would you tell the jury how many separate transactions Continental Grain had with Allied during the whole year 1963, in which --

A In cottonseed oil?

Q In cottonseed oil, in which Continental bought and received delivery of registered warehouse receipts and ex-pitted futures contracts against them.

A Basically three separate contracts, the 275 and -- the 245 and the 875.

Q Basically three separate transactions in that whole year, am I correct?

A Yes, sir.

was required by the rules of theproduce exchange?

A We thought we included all of the requirements as set forth in the rules of the produce exchange with respect to this type of ex-pit transaction.

Q Mr. Ferretti, did you send copies to the CEA and to the clearing association?

A Yes, we did.

Q Did you rever receive any complaint from the CEA, clearing association, or produce exchange that the information wasn't complete enough?

A No, we did not.

Q Or that it didn't comply with the rules?

A No, we did not.

Q If you had been requested to give more information, would you give it?

A We would certainly --

MR. BERNFELD: Objection, your Honor.

THE COURT: Well, it's answered. Proceed.

Q Let's go back to what your position is. You were employed at Continental Grain beginning in March of 1963 in a separate division, am I correct?

A Yes, sir.

Q What was that division called?

A The general merchandise division.

Q Apart from oils, what other merchandise did that division handle?

A Well, one of our big commodities was rice. We handled pulses and different types of meals, other types of beans. We handled miscellaneous merchandise on occasion. We would handle maybe prunes or milk or chicken.

Q Did you handle grains?

A No, we never handled any grains at all.

Q You understood Continental Grain's main business was gain, am I correct?

A Yes, they were charged with grain. We had nothing to do with grain.

Q Before March of 1963 was this general merchandise division a separate corporation?

A Yes, it was completely separate from Continental Grain Company.

Q And it was then the North AmericanContinental Division of Arrow Continental Corporation, am I correct?

A Yes, sir.

Q You understood that that corporation was owned by the same family, the Fribourg family, that owned Continental Grain, am I correct?

A I did.

Q Was Mr. Vogel ever employed by the North American Continental Company?

A Never.

Q Who was the head of the North American Continental Company?

A Mr. Totah was the executive vice president of the North American Continental.

Q Was he in charge of it?

A He was in charge of the whole opreation.

Q When that company was merged into Continental, did Mr. Vogel -- Mr. Totah remain in charge?

A Yes. There was no change in his responsibility.

Q Did Mr. Vogel have anything whatsoever to do with the operations of your division, in 1963?

A No, he did not.

Q He did not?

A He did not.

Q Did Mr. Totah report to him, so far as you knew?

A He did not.

Q Did you?

A I did not.

Q Did you send him copies of your position sheets or other information?

A Never.

Q After this merger between North American and Continental, was the General Merchandise Division run by the same management that had run it at North American?

A Yes, exactly the same.

Q And the commodities that you dealt in were different from the commodities that Continental Grain dealt in?

A Yes. Continental handled grain and we handled no grain.

Q You were shown an exhibit listing your various financing agreements in 1963 with Allied; do you recall that exhibit that you were shown?

A The one with the financing on it, yes.

Q Yes, sir. At my request, you have reviewed those financing agreements, have you not, to see what the interest rate was?

A Yes.

Q Is it a fact that the interest rate was six per cent?

A Yes, sir.

A Yes.

Q During that period you extended this financing at six per cent, am I correct?

A Yes, sir.

Q Did you receive as security warehouse receipts representing the actual oil?

A We received warehouse receipts representing a value of oil. I don't know what you mean by actual --

Q They were field warehouse receipts representing oil?

A Exactly.

Q Do I understand that the oil that you were purchasing for export was for the most part soybean oil?

A Principally, yes.

Q Is that also true of the oil that was represented by these warehouse receipts?

A Yes, the preponderance of warehouse receipts we received was for soybean oil.

Q You were asked about the prices that Allied quoted versus the prices that others quoted.

Were you involved in obtaining quotes from suppliers to determine who to buy from?

A No, not me personally.

Q Did you have any knowledge to what Allied's

anything that could be characterized as a net position.

THE COURT: I gather your objection goes to weight. You can make further inquiry on cross examination.

The objection is overruled.

MR. BERNFELD: If I just may make one further statement.

It goes to the fact we were neer provided, even though we requested it in discovery, with the documentation that would allow us to reach the calculation as to what that net position was.

THE COURT: That I can't deal with now. I gather it is a plaintiff's document?

MR. BERNFELD: For identification. We received it as a set, your Honor.

THE COURT: The objection is overruled.

MR. BERNFELD: Yes, your Honor.

THE COURT: Let's proceed.

MR. BERNFELD: Could we mark that as a defendant's exhibit then, your Honor?

MR. LIMAN: Happily.

THE COURT: I'm sure that that would be agreeable.

(Defendant's Exhibit 208 received in evidence.)

determine how it actually worked out?

A We tried to do that and we did it on the basis of the records that we had.

Q Can you identify Defendants' Exhibit 152 for identification?

A Yes, this is a record. This is a recapitulatinn of our soybean oil -- of our cottonseed oil, our actual cottonseed oil position from November 13 to November 20, 1963.

Q That was the one that was prepared this year based on the records that you have?

A Yes, with Arthur Young.

Q Arthur Young looked over what you did; am I correct?

A Yes, sir.

Q You supervised this project?

A Yes.

Q Can you identify Exhibit 154, Defendants' Exhibit 154 for identification?

A Yes. 154 representsthe actual trading by Continental Grain Company in cottonseed oil futures between November 14, '63 and November 19, 1963; the actual buying and selling of futures contracts from November 14 to November 19.

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Q The amount of Continental's trading between November 14 and November 19, 1963 in futures contracts is also reflected on one of the exhibits that plaintiff showed you, the number of contracts you bought and sold in cottonseed oil during that period; am I correct?

A Yes.

MR. BERNFELD: Objection, your Honor.

Which exhibit are you referring to that I showed to Mr. Ferretti?

MR. LIMAN: Not that you showed, one of your exhibits. You have a plaintiff's exhibit that shows what Continental bought during the period November 14 through November 19.

MR. BERNFELD: My objection is that there's no foundation that Mr. Ferretti knows that because there's nothing that was shown to him prior to this.

Q Does Defendants' Exhibt 154 represent all of the futures contractsyou bought and sold on the New York Produce Exchange in cottonseed oil between November 14 and November 19?

A Yes, sir.

Q Did you also make a computation as to what you lost in trading during that perio[illegible]-

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A Yes.

Q -- between November 14 and November 19?

A Yes.

Q This is just futures trading, not the cash side?

A That's right, futures trading.

Q And this is shown on Defendants' Exhibit 154?

A Yes, sir.

MR. LIMAN: I will offer Defendants' Exhibit 154 first.

MR. BERNFELD: Just one moment, your Honor.

(Pause)

MR. BERNFELD: Your Honor, what I would like to ask -- I believe this goes somewhat outside the scope of our direct -- is merely we withhold the offer so we can compare their chart to ours. We were not expecting this offer to be made today. We would like to determine whether or not it's accurate.

THE COURT: All right. That is agreeable.

Mr. Ferretti is going to be here Monday.

Q Mr. Ferretti, when you verified what your overall position was with Arthur Young this year on the

basis of actual deliveries, did you find that in this period in November, from November 14 through November 19, that you were a net buyer of cottonseed oil?

A Yes. We bought 125 more contracts than we sold.

Q That's on futures you are talking about?

A On the futures.

Q Okay.

Apart from your futures, did you find that in terms of both futures and cash that you were a net buyer in this period?

A Yes.

Q So you were a net buyer both on futures and cash during this period?

A Yes, sir.

Q Just so there's no mystery about it --

THE COURT: Is this period from November 11?

MR. LIMAN: On the verification of it we started because of the issues in this case from November 14 through November 19. The one that was prepared many years ago had dated before November 14.

MR. BERNFELD: Your Honor, just for the sake of clarification, the earlier document did not have

any backup sheets with respect to any period prior to November 11.

I just want to renew my objection with respect to the document.

THE COURT: He's only talking about November 11 to the 19th on one document and November 14 to the 19th on this document.

Q Mr. Ferretti, did you when you made your computations find that you had lost money not just on the cash and futures taken together, but you lost money on your futures trading in cottonseed oil between November 14 and November 19?

A Yes, on the basis of the actual trading between November 14 and 19 we lost $101,988.

Q Why did you lose it?

A We lost it because we bought 125 contracts more than we sold and the market instead of going up went down.

Q How many people were involved in this general merchandise division at Continental Grain in the oil business?

A You mean working on oil?

Q Working on oil.

A Five or six people involved.

A I have.

Q Were you present during the testimony of Mr. MacDonald?

A I was present.

Q What about during the testimony of Mr. Anderson?

A On part of it.

Q And Mr. Klein?

A Yes, sir.

Q Mr. Vogel, you were an executive vice-president of Continental Grain during 1963; were you not?

A I was.

Q You became an executive vice-president of Continental Grain in 1959; isn't that right?

A Yes, sir, that's right.

Q What were your duties and responsibilities at Continental Grain during 1963?

A I was in charge of the interior United States and Canadian offices. I was supervising our grain elevators, which numbered upwards of 100. I was making projections on new plans, supervised engineering and had these duties for the United States and Canada.

Q Can you explain briefly by what you mean by being in charge of the interior offices in the United States and Canada?

the death of the president I would take over. In his absence, I would act in his stead.

Q Did you have any continuing duties --

A This never occurred, incidentally.

Q -- during 1963?

A Beg pardon?

Q Did you have any other duties as vice-president of the Exchange in 1963?

A I was occupied in the Exchange, in merger negotiations with the Cotton Exchange and the Wool Exchange, which was ongoing through all of 1963. We were trying to merge these three exchanges to bring them together on to the Produce Exchange at 2 Broadway.

Q Did you have an office or office space available to you at the Produce Exchange?

A No, sir. I beg pardon, where?

Q At the Produce Exchange during 1963.

A No, sir.

Q Aside from attending board meetings, how regularly did you go to the Produce Exchange during 1963?

A Whenever I was in town and I traveled extensively, I attended all of the board meetings. I had numerous other meetings in regard to the merger. There was also during that year an effort was to be made

member of the St. Louis Merchants Exchange.

Q This was also the custom not just of Continental Grain but of many large companies in the commodities buienss, to have their executives as members of the various commodities exchanges?

A I believe that other companies also did this. I certainly cannot testify as to their procedures. I think that was the case.

Q Continental Grain paid your dues as a member of the produce exchange, did it not?

A That is correct, sir.

Q Did you personally trade commodities on the produce exchange, sir?

A No, sir.

Q I'm sorry.

A No, sir.

Q Thank you.

During 1963 did you generally keep yourself informed as to the market activity which was taking place on the produce exchange, Mr. Vogel?

A I was generally apprised of the situation in agricultural commodities and as such also the commodities that were generally traded on the produce exchange.

Q Did you seek in 1963 to keep advised as to

market conditions, traders activities, price movements and the like in cottonseed oil futures?

A No, sir, not specifically because there were people on the executive committee and on the board of managers who traded daily in these -- in cottonseed oil and were capable people.

Q I appreciate that. I just want to ascertain what you did, sir.

A I did not know.

Q The answer is no, isn't that right?

A Yes.

Q From time to time during 1963 did you inquire of the people at Continental Grain who did trade cottonseed oil about the market conditions that existed during that year on the produce exchange?

A No, sir.

Q During 1963, Mr. Vogel, were you familiar with the volume of trading that was taking place on the produce exchange?

A I don't believe I knew the volume of trading specifically.

Q Do you recall knowing that the volume of trading had increased or was increasing?

A I think I knew in 1963 that generally volume

in agricultural commodities increased because it was the year that Russia in particular was in the market for grains, purchased grains in Canada in September of 1963 and at the turn of the year, after many negotiations, bought the grain from the United States.

This was early 1964.

Q What I'm asking you, sir, in particular is do you recall the volume of trading increasing in cottonseed oil futures contracts on the New York Produce Exchange?

A I did not specifically study this.

Q Thank you.

A All of the trading increased during that year. So the assumption is that cottonseed oil also did.

Q I take it, Mr. Vogel, that during 1963 you did not read on a regular basis the govenment publications which came out and showed the volume of trading on the New York Produce Exchange?

A The CEA reports?

Q Yes, sir.

A Not particularly. I glanced at them occasionally, but I did not particularly study them, right.

Q During 1963 did you keep yourself apprised as to what the open ingerest was in cottorseed oil futures contracts on the New York Produce Exchange?

A I did not know what the open interest was day by day; no, sir.

Q I didn't hear the end of your answer, sir.

A I did not know what the open interest was day by day on the cotton exchange.

Q Did you know that the open interest was increasing during 1963?

A I stated before that I assumed that it was increasing, the same as open interest generally increased because agricultural markets were volatile in 1963.

Q I take it you did not regularly follow the government publications that dealt with open interest on the New York Produce Exchange?

A I did not.

Q Did you know in 1963, Mr. Vogel, that the volume of deliveries on the New York Produce Exchange was increasing?

A I did not specifically know this, no.

Q Were you aware during 1963, Mr. Vogel, of who the large traders were in cottonseed oil futures?

I mean prior to November 14.

A I don't know that I specifically knew who the large traders were. Not specifically, no.

Q Did you know generally?

A I knew generally the companies that did oil business, etc.. I did not specifically know.

Q What companies did you know in 1963 that did in a general sense a lot of oil business?

A Proctor & Gamble and such companies as that.

Q Were you aware in 1963, say prior to November 14, that Allied Crude Vegetable Oil Refining Company was a large trader in cottonseed oil futures contracts?

A I don't believe that I was specifically aware of that fact.

Q Were you generally aware of that?

A I knew that Continental did business with them, but I was not particularly aware how big they were trading on the produce exchange.

Q Were you aware during 1963, Mr. Vogel, that there was an increase in the concentration on the long side of the xottonseed oil futures market?

A At what time?

Q Prior to November 14, 1963.

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A I was not awrre of that. I was not made aware of that.

Q I take it again, sir, you did not follow the monthly government publication on commitments of traders in cottonseed oil futures?

A No, sir.

Q Were you aware during 1963, and again prior to November 14, Mr. Vogel, that the number of ex-pit transactions and the number of contracts involved in these ex-pit transactions was increasing on the New York Produce Exchange?

A I believe I was not very familiar in 1963 with the expression ex-pit. I did know certainly that fugures would be exchanged for cash, purchases or sales.

Q Were you personally familiar with the ex-pit trading rules of the New York Produce Exchange which were in effect during 1963?

A I believe that I definitely was aware of the fact that if a trade took place for exchange of futures, thatthis was not by outcry in the pit and had to be posted and reported.

Q Were you aware of the terms and conditions set forth in the rules of the produce exchange during 1963

concerning ex-pits?

A I believe I had an idea.

Q Did you know there were two types of ex-pit transactions?

A I really only knew the exchange of futures for cash as such.

Q Were you familiar with the reporting requirements that clearing members were required to adhere to pursuant to the ex-pit rules of the produce exchange?

A Yes, I knew they had to be reported.

Q Mr. Vogel, you were present, were you not, in November 1962 at the board meeting when the board approved an amendment to those reporting requirements and increased --

A Could I refresh my recollection?

Q Yes, sir. I would like to show you Plaintiff's Exhibit 240 for identification, which are the minutes of the meeting of the board of November 1, 1962.

A What are you referring to here? May I read this?

Q Sure.

(Pause)

Q To save some time I will show you which portion of the rule I'm talking about, sir.

you just referred to?

A I believe that we had a number of conversations since the Exchange tried to get the grain supervision of the fleet of boats that the Commodity Credit Corporation had in the Hudson River, which were -- which needed supervision as to condition. So we had extensive conversations on that prior to Mr. Berg going to Washington to try to induce the Government to give the Produce Exchange this opportunity.

As I said before, there was a possibility of selling the ground under No. 2 Broadway. We had conversations on that. There was merger possibilities also at the Board meetings.

Q I take it from what you have been saying, Mr. Vogel, that your responsibilities at Continental Grain did not involve cottonseed oil.

A Not at all.

Q I'm sorry. If you din't hear me --

A No, I heard you.

Q Who was responsible at Continental Grain for cottonseed oil during 1963?

A Mr. Totah.

Q Did you ever discuss the state of the cotton-seed oil futures market with Mr. Totah during 1963?

A No, sir.

Q Did you instruct Mr. Totah to keep you informed as to developments in cottonseed oil futures trading on the Produce Exchange during that year?

A I did not and I had no right to instruct him.

Q Did you ever discuss Continental Grain's activities in cottonseed oil with Mr. Totah during that year?

A No, sir.

Q In 1963, Mr. Vogel, did you know George Stafford?

A I knew George Stafford.

Q Who was he?

A He was a subordinator to Mr. Totah in the Fats and Oils Division.

Q Did you know Mr. George Worthington?

A Yes.

Q Who was he?

A He had a similar position, being subordinator to Mr. Totah in that division.

Q What about Mr. Ferretti, John Ferretti?

A I knew him also and he also worked in that division.

Q Did you ever discuss during 1963 Continental

Grain's cottonseed oil activities with either Mr. Stafford, Mr. Worthington or Mr. Ferretti?

A No, sir, I did not.

Q Did you ever discuss the state of the cottonseed oil futures market on the New York Produce Exchange with any of those gentlemen during 1963?

A When in 1963?

Q Prior to November 14th.

A All of these questions pertain to this?

Q Yes.

A No, I did not.

Q Excuse me?

A I did not.

Q Thank you.

Is it your testimony, Mr. Vogel, that the Grain Department of Continental Grain really had nothing to do with the Oil Department at Continental Grain during 1963?

A The way Continental is structured -- I would like to explain --

Q Please do.

A Continental is owned by Mr. Fribourg. He is the president.

The organization was structured so that perhaps

20 to 25 people reported directly to Mr. Fribourg. The fats and oil responsibility was strictly Mr. Totah's. I was directly responsible on grains to Mr. Fribourg and there was no crossover permitted the way he runs the company.

Q So Mr. Totah reported directly to Mr. Fribourg, too?

A Definitely.

Q When Mr. Fribourg was away or out of town, who did you report to?

A Mr. Fribourg by telephone.

Q Is that the same for Mr. Totah?

A Absolutely. He was never out of pocket at any time, day and night.

Q It is true that when the Oils Department traded in soybean oil futures, that they did use the facilities of the Grain Department's office in Chicago?

A May I describe this more closely?

Any futures trading in the Chicago pits or on the Board of Trade was handled by employees of Continental Grain Company in Chicago who got their orders directly from the origin, like Mr. Totah or any other origin. They then filled the orders as specified by Mr. Totah.

Q These employees in Chicago were in the Grain Department, isn't that correct?

A They were part of Continental Grain Company in Chicago.

Q The Chicago office, was that one of the interior offices that you were in charge of during 1963?

A It was under my jurisdiction.

Q Did you attempt in any way to keep track of what kind of trading was going on in the Chicago office in connection with fats and oils?

A I did not. I had nothing to do with it.

Q Did you in any way during 1963, Mr. Vogel, make any attempt to keep abreast of what the activities were of the Fats and Oils Department?

A At what time in 1963?

Q Prior to November 14th.

A Not particularly. I had a general idea of what was going on in agricultural commodities, but not specifically in cottonseed oil.

Q Did you see Mr. Totah and his staff around the office on regular occasions during 1963?

A Yes.

Q Did you have lunch with Mr. Totah from time to time?

A We both lunched in the executive dining room where probably 25 or 30 other people lunched, yes.

Q From time to time during these occasions when you saw Mr. Totah around the office or in the lunch-room, did you discuss with Mr. Totah what the grain department was doing and what the oil department was doing?

A Not specifically, but conversations might have said we sold some oil to Pakistan or to Spain or something, a general remark, or we sold five boatloads of grain to Poland or Rumania or something like this, but no detail discussion of any sort.

Q Did you receive any internal financial statemenst or reports concerning the activities of the oil department during 1963 and prior to November 14?

A No, sir.

Q So your testimony here today is that aside from a general knowledge, you really had no knowledge specifically of what the oil department was doing during

1963, prior to November 14; is that correct?

A I had no responsibilities.

Q I'm asking you about your knowledge, sir.

A Therefore, I had no detailed knowledge of what was going on.

Q Were you aware during 1963 that Continental Grain did business with Allied Crude Vegetable Oil Refining Company?

A I was aware of the fact that we did business with Allied as we did with other people.

Q Were you aware of the fact that such business included purchasing of oil from Allied and also financin[illegible] Allied?

A I beli[illegible] I was aware of the fact that we financed warehouse receipts occasionally as we did also in grain generally in the United States. I had no detail knowledge of this.

Q Did you know what kind of warehouse receipts Continental was financing from Allied?

A Not specifically; no, sir.

Q Did you know whether they were registered warehouse receipts on the New York Produce Exchange?

A I had no reason to check into this and I had no knowledge of this.

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Q Were you aware during 1963 and prior to November 14 that Allied engaged in ex-pit transactions with Continental Grain relating to some of these financings?

A No, sir.

Q Were you aware that Continental had extended loans to Allied during 1962 and 1963 which totalled millions of dollars?

A I believe I knew we had extended credit based on -- based against warehouse receipts.

Q You knew that Mr. DeAngelis, did you not, was president of Allied Oil?

A I did not know him.

Q You didnot know Mr. DeAngelis?

A I never met him.

Q My question was, did you know that Mr. DeAngelis was the president of Allied Crude?

THE COURT: You know my vies on this, Mr. Harris. This has no relevance to this matter at all.

MR. HARRIS: I think I am entitled --

THE COURT: I have indulged you. It has no relevance to theissues in this case, Mr. Harris.

MR. HARRIS: I respectfully submit that they do, your Honor.

THE COURT: Let's proceed to something that

does have some relevance to this case.

Q Mr. Vogel, we stipulated before you were not present at the meeting of the board of managers on November 14 when a control committee was established.

A That is correct.

Q When did you learn that a control committee had been established?

A I honestly do not know exactly whether I learned it on the 19th or thereafter when the control committee was established.

Q Mr. Vogel, you were present, were you not, at the joint meeting held on November 19 with representatives of the executive committee of the produce exchange --

A Yes, sir.

Q Let me finish the question.

A I'm sorry.

Q -- and representatives of the clearing association and others on the afternoon of November 19; were you not?

A Yes, sir.

Q It was at that meeting, Mr. Vogel, that a decision was made to close the cottonseed oil futures market as of the next day and to settle out all contracts?

A To suspend trading and settle out the contracts,right, sir.

Q You voted in favor of the resolution to suspend trading; isn't that correct?

A Yes, sir.

Q Did you know at the meeting of November 19 when you voted to close the market and suspend trading and settle contracts as to what Continental Grain's cottonseed oil position was?

A I did not know what Continental's position was.

Q Did you know what Continental Grain's cottonseed oil futures position was prior to that during 1963?

A No, sir.

Q Did you learn at the meeting of November 19 from someone else at the meeting what Continental position was?

A I stated before that I heard assumptoins by Mr. Anderson that he thought we were short, Continental was short, but I had no specific knowledge, myself.

Q When did you talk to Mr. Anderson about this on November 19?

A After the meeting had taken place, in the afternoon, in the very late evening, so to speak, of November 19.

Q Did Mr. Anderson approach you or did you approach him?

A Mr. Anderson congratulated me that I voted to close the exchange. Also, he assumed that we were short in hedge and it was detrimental to Continental's position. But I had no knowledge of Continental's position whatsoever.

Q I am trying to get as best you recall precisely what Mr. Anderson said to you on this subject.

A I just stated it.

Q What did you say to him?

A I had no further comment.

Q Did Mr. Anderson tell you how he knew what Continental's position was on that day?

A I don't know that he knew or assumed.

Q Mr. Vogel, in your testiony in 1972, which you mentioned before, the deposition in this case, at page 40, you stated the following:

"Mr. Anderson stated that Continental's position was a short future position which was a hedge against cash, and that is when I found out we were short, and that was the position."

A That was a choice of words in 1972. I do not -- have no reason to believe that he knew or assumed. It was a statement that he made. I cannot state it any differently.

Q Did you have any idea how Mr. Anderson knew that Continental had a short position which was a hedge against cash?

A I have no idea how he knew, or how he assumed.

MR. LIMAN: Mr. Harris, the testimony that you have read indicates that the statement took place after the vote.

MR. HARRIS: Yes, sir, I don't disagree with that at all.

attempt to find out what the control committee had done?

A As I stated before, I do not know when I became aware of when the control committee -- when I became aware of this fact, so I had no reason to inquire about anything. I did not know.

Q When you voted to close the market on November 19 and settle out the contracts, were you aware that -- did you know whether or not Continental was a member of the clearing association?

A I knew that Continental was a member of the clearing association.

Q You also knew, did you not, that Continental would have to bear, or might have to bear some of the obligation caused by the default or the impending default of Ira Haupt & Company, and Williston & Beane in the event that the market remained open, did you not?

A I knew that in the case of default that the clearing members were responsible.

MR. HARRIS: No further questions. Wait a minute. Just let me consult.

(Pause)

MR. HARRIS: No further questions.

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CROSS-EXAMINATION

BY MR. LIMAN:

Q Mr. Vogel, how many years were you employed by Continental before your retirement?

A 45 years.

Q Is it fair to say that all of your working career at Continental Grain was centered in the grain business?

A Very definitely.

Q Were you aware that prior to March 1, 1963 --

A I beg your pardon?

Q Were you aware that prior to March 1, 1963 the NOrth American Continental Com pany, a division of Arrow Continental Corporation, conducted a business in fats and oils, including cottonseed oil?

A Yes, sir.

Q Were you ever an employee of that company?

A No, sir.

Q Or an officer of that company?

A I had no responsibility towards it.

Q Are you aware that after March 1, 1963, that company, North American Continental, was merged into Continental Grain Company?

A Yes, sir.

Q And was the management that had run that company moved into the Continental Grain?

A It remained the same.

Q And did that management continue to report directly to Mr. Fribourg?

A Absolutely.

Q And that management was headed by Mr. Totah?

A Thatis correct, sir.

Q Did you have any responsibility whatsoever for that division?

A I did not.

Q In all of your years in the commodities business have you ever been engaged in the trading of oils?

A I have not been.

Q Or in the supervision of trading of oils?

A I have not.

Q Have you ever met Mr. DeAngelis?

A I never met Mr. DeAngelis

Q Or spoken to him?

A Never.

Q Is the same thing true with respect to Gittleman?

A Correct, sir.

Q Were you ever consulted by Mr. Totah or anybody at Continental Grain with respect to whether purchases should bemade from Allied Crude?

A At no time was I consulted.

Q Or with respect to whether financing should be done?

A Absolutely not.

Q And you testified thatyou had heard that Continental Grain was extending financing on the basis of warehouse receipts?

A Yes, sir.

Q Do I understand that it is not unusual in the grain business for Continental to extend financing on the basis of warehouse reciepts?

A It is very usual that financing is done of grain warehouse receipts.

Q You say very usual?

A Very usual.

Q But in any event you were not involved at all in the relationship between Continental and Allied, is that correct?

A I was not, absolutely not.

Q Mr. Harris asked you about the Chicago office of Continental Grain, do you remember those questions?

A Right.

Q Did the Chicago office of Continental Grain service the future contract business for all of the offices of Continental on the Chicago Board of Trade?

A Absolutely. In all commodities.

Q Did they report directly to the divisions that were engaged in that trading?

A That is correct.

Q They didn't report through you, am I correct?

A That is absolutely right.

Q Is it a fact that you were not involved in the trading of soybean oil for Continental Grain either?

A Absolutely not.

Q Is it a fact that that division which dealt with that oil as an autonomous division reporting directly to Mr. Fribourg?

A That is correct.

Q And Mr. Fribourg was the owner of the company?

A That is correct.

Q And I believe Mr. Harris asked you at one point whether you ever had asked Mr. Totah for something and you said you had no right to give him instructions.

A Absolutely not.

Q Mr. Totah got his instructions --

A From Mr. Fribourg solely and only.

Q And you were asked about conversations at lunch at this executive dining table. How many people would eat at that table?

A I said before possibly 25 or 30 people.

Q And that was a table set up as a convenience so that people could get back to their activities, am I correct?

A That is correct, sir.

Q Lunches weren't long leisurely affairs there, is that a fair statement?

A That's right.

Q Let's get to your membership first as a member of the Produce Exchange, as opposed to a member of the Board of Managers.

MR. LIMAN: Do you have the application you put in evidence, Mr. Harris?

MR. HARRIS: Yes.

(Handing.)

Q Did you understand that corporations and partnerships could not be members of a commodities exchange?

A Yes, sir.

Q And that in order to get the privilege of trading officers or employees of the company would have to be members, am I correct?

A That is correct, sir.

Q You became a member of the Produce Exchange in --

A 1959.

Q 1959. Was that shortly after you had moved to New York?

A That is correct, sir.

Q In your application, if you will look at the line, "State in detail the type of business you intend to transact and how you intend to function as a member of this Exchange;' did you write, as officer of Continental Grain Company?

A That is correct.

Q Was that to signify, sir, that you did not intend to do any trading on your own behalf personally?

A Absolutely. This was not intended whatsoever.

Q Have you ever engaged in personal transactions on any commodities exchanges?

A I have never on any commodity exchange, in grain or oils done any trading, not personally.

Q What other exchanges were you a member of in 1963?

A I was a member of the Chicago Board of Trade and at St. Louis Merchant Exchange.

Q In the case of those exchanges, am I correct that your membership on the exchange was also in order for Continental Grain to be eligible for trading there as well?

A That is correct.

Q And not for personal trading by yourself?

A Absolutely right.

Q When did you first become a member of the Board of Managers of the Produce Exchange?

A I became a member of the Board of Managers in 1961.

Q Did you have an understanding, Mr. Vogel, that under its bylaws the memberships on the Board of Managers was required to be apportioned among the various traders on the Exchange?

A This is correct.

Q What trade were you elected as a representative of?

A I was elected as a representative of the grain trade.

Q Not the oil trade?

A Not the oil trade.

Q Did you understand that there were other members on that Board who were engaged in the oil trade and were elected as members of the oil trade?

A There were quite a number engaged in the oil trade.

Q Can you tell the jury, Mr. Vogel, what connection the grain trade had with the Produce Exchange? In other words, why was it that you had representatives of the grain trade on the Board?

A I think that one has to state that in early years the Port of New York did considerable grain export. This has diminished. So therefore, there still were shipments in 1963, and the Exchange had an Inspection Department, a Weighing Department to supervise such grain shipments. There also was a section on the Produce Exchange floor where there were a number of individuals who conducted a grain business as brokers in cash grain, not a futures, there was no futures, they had the privilege of the communications, telephones, long distance, and bought grain from the interior of the United States to the consuming area in the east.

The reason that they were on the Exchange

floor is because the Board were there, so they saw the fluctuating markets, and all your cash merchandise is based on the futures market.

So they could readily converse with buyer and seller over the long distance telephone.

Q In fact, at one time before the labor situation changed in the Port of New York, was the Produce Exchange one of the principal grain markets?

A It was an important eastern export port.

Q Is it a fact that even in 1963, approximately half of the floor of the Produce Exchange was assigned to the grain trade?

A That is correct, sir.

Q Were you consulted by Mr. Berg about how the Exchange would encourage and increase the use of the Exchange by the grain trade?

A It was a definite effort to try to improve this..

Q You testified that you became a member of the Exchange because of your relationshp with Continental Grain and the need for Continental Grain, or its custom of having officers as members of the Board of Managers did you regard yourself as a representative of Continental Grain on the Board of Managers?

A No, sir, I definitely did not.

Q Who did you regard yourself as a representative of?

A As part of the Produce Exchange, and solely for that purpose.

Q Did you report to Mr. Fribourg on your activities as a member of the Board of Managers?

A No, sir.

Q Did you ever ask Mr. Fribourg's opinion on how you should vote as a member of the Board of Managers?

A Absolutely not.

Q What was your prior experience before you became a member of the Board of Managers with respect to serving on Boards of exchanges?

A From 1947 to 1952 I was on the Board of Directors of the St. Louis Merchants Exchange, I was its president in 1951. The St. Louis Merchants Exchange was an organization which handled tremendous quantities of cash grain, and particularly vis a vis the export down the Mississippi River through New Orleans. It had an organization and the supervision of all of the grain elevators in the switching limits of St. Louis, the supervision of grain inspection, of weighing and the supervision of issuing warehouse receipts which were registered by the St. Louis Merchants Exchange.

Q You undersood, did you not, that the Exchange had the responsibility for maintaining an orderly market and averting corners and squeezes and manipulation?

A Yes.

Q That was something you were conscious of in 1963?

A Definitely.

Q Did the Produce Exchange of a structure for fulfilling these regulatory responsibilities?

A The Produce Exchange had a Board of Managers which was a policy-making body. It had an Executive Committee, it had an executive manager, Mr. Berg, who had been with the Produce Exchange since I believe 1947, who was very experienced, a forthright and knowledgeable man. He had a number -- the Produce Exchange had a number of committees whose duty it was to inform the Board of Directors of any unusual situation or anything that needed a policy decision.

The Produce Exchange had, to my recollection, a number of employees, in the neighborhood of 15 or 20 who supervised all of the activities of the Produce Exchange.

Q Am I correct, therefore, that your understanding was that Mr. Berg had a duty to report to the Board

anything that was unusual that required the action of the Board?

A Absolutely.

Q And there were a couple of committees dealing with trading that had the same responsibility?

A Exactly.

Q Is that the same structure that you were familiar with in the Chicago Board of Trade and other contract markets?

A Extremely similar.

Q Were you a member of the Cottonseed Products Committee?

A No, sir.

Q Were you a member of any of these floor committees, the supervisory quotations committees?

A I was a member of the Transportation Committee and the Admissions Committee.

Q Were you a member of any of the floor committees that were supervising trading?

A No, sir, definitely not.

Q Did you have an opinion of Mr. Berg's qualifications to hold his position based on your experience in St. Louis and elsewhere?

A I considered Mr. Berg a highly qualified

individual who was steeped in every facet of the business and extremely capable, conscientious, honest and forthright.

Q Did you have an opinion of your other members of the Board such as Mr. Anderson, Mr. MacDonald, who were knowledgeable about markets?

A Mr. Anderson and Mr. MacDonald and some of the others were most knowledgeable in the cottonseed oil business, were daily connected with it and their analysis and opinion was certainly trusted and taken.

Q You testified that you were a vice-president of the Exchange; am I correct?

A That is correct.

Q Was it your understanding that the officerships of the Exchange were divided among the trades as well?

A That is correct.

Q You testified that your duty as vice-president was to act when the president couldn't function?

A That is right.

Q Did that ever occur?

A No, sir.

Q You also testified that the Executive Committee's duties were to act when the Board couldn't

function; am I correct?

A That is correct.

Q Prior to November 18, 1963 was there any occasion when the Executive Committee was called upon to act because the Board couldn't function?

A I don't recall.

Q You don't recall any such occasion, do you?

A That is right.

Q Were you given some special assignments by the Board which took your time? I don't want you to go into detail about them.

A As I stated before, there was a tremendous effort to merge the Produce Exchange, the Cotton Exchange and the Wool Exchange. I spent very considerable time on this effort, the same as others.

Q You also spent time on the proposition to sell the land that was owned by the Produce Exchange?

A That is correct, sir.

Q And you were also consulted with respect to the mothball fleet that was available for storage up in the Hudson; am I correct?

A Correct.

Q In connection with those duties, you spoke to Mr. Berg?

A Yes.

Q You spoke to Mr. MacDonald; am I correct?

A Yes.

Q Did you also meet in connection with this merger with the officials of the other exchanges and accountants and appraisers?

A That is correct.

Q Did your meetings and conversations with Mr. Berg and Mr. MacDonald with respect to this merger continue throughout the fall of 1963?

A That's right, sir.

Q On the occasions when you spoke to Mr. MacDonald and Mr. Berg, did they ever express to you any concern about the state of cottonseed oil trading on their exchanges?

A At no time.

Q Did they ever express to you any concern or ever tell you that there was ever increase in concentration?

A No, sir.

Q Did they ever discuss with you ex-pit trading?

A No, sir.

no concern by your company?

A Correct.

Q Did any official of the CEA ever express to you any concern about the state of the cottonseed oil market?

A No, sir.

Q Did any of the publications that you read indicate any concern about the cottonseed oil market?

A No, sir.

Q Were you out of town the week in November that includes November 14?

A Yes, sir.

Q Is it a fact that you returned to your office on the 18th of November, Monday the 18th?

A That's correct, sir.

Q Did you receive a call sometime later that day from Mr. Berg?

A Yes, sir, late in the afternoon.

Q Were you asked by Mr. Berg to approve a limit on trading of 25 points?

A Yes, sir.

Q You have testified that you have had difficulty with recollection of some of these events.

When was the first time that anybody took your

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A Yes, sir.

Q Do you remember their names?

A Mr. Kaufman and Mr. Kamerman.

Q Do you remember whether they said anything after the board voted to suspend trading and close out the contracts?

A They were very happy that we made that decision because this would keep them alive and going in business.

Q At the time you voted, did you have any idea what your company's position was in cottonseed oil?

A None whatsoever.

Q Before you voted you didn't consult with Mr. Fribourg or anybody else at the company?

A I did not.

Q You didn't know whether you were long, short or had no position; am I correct?

A I did not know.

Q After the vote did Mr. Harry Anderson say something to you?

A Mr. Anderson congratulated me that I voted to close since he assumed or knew that we were hedged and short in the cottonseed oil market.

Q Was the thrust of his remarks to you as you

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recall them today that you voted against your company's own interest in closing this market?

A That was the gist of that remark.

Q You didn't even know or care when you voted whether it was for or against your company's interest; am I correct?

A Absolutely. I made an independent judgment.

Q Mr. Harris said or asked you whether you were aware that your company was a member of the clearing association.

A Yes, sir.

Q Did that fact, that Continental was a member of the clearing association, enter into your mind?

A Absolutely not.

A That is correct, sir.

Q When Mr. Berg called you on the night of the 18th, I believe it was in connection with setting a 25-point limit --

A Yes, sir.

Q -- did he tell you anything about Allied Crude during that phont call?

A No, sir.

Q Did he mention Ira Haupt?

A No, sir.

Q Did he tell you at the time that other members of the executive committee voted to impose a 25-point limit?

A He told me that others were in favor of it, yes.

Q Did you ask him any questions,as you recall, in that conversatio ?

A I don't recall any particular questions but I knew that the recommendations of a Mr. Anderson and Mr. MacDonald, who probably were mentioned or were mentioned, that this was sufficient recommendation because they were specialists in this field and knew the market and were on the exchange every day.

Q Did Mr. Berg preface his remarks to you or

his request for you to prove this that the cottonseed oil futures market was in disorderly condition or unhealthy or something?

A He made me aware of the fact no doubt that the market dropped that day severely.

Q Did he say anything beyond the fact that the market dropped that day?

A No, sir, to my recollection.

Q I take it up to November 18 when you spoke to Mr. Berg you had no knowledge whatsoever as to whether the cottonseed oil futures market was healthy or unhealthy or manipulated or not manipulated?

A I was not made aware of the fact that it was unhealthy, in any way.

Q Then you must have been pretty surprised when you received this phone call on the 18th and asked to vote in favor of imposing a 25-point price limitation, were you not?

A I cannot recall today whether I was surprised or not, Mr. Harris.

Q Had any price limitation been imposed by order of the executive committee during any other time in 1963?

A Not to my knowledge on this exchange, but in

Q And in your discussions with Mr. Fribourg and other people at Continental and your attorneys in this lawsuit from November 19, 1963 to the present, is it your testimony that you never inquired as to whether Continental made or lost money as a result of what happened on the Produce Exchange?

A To what their position, no, sir. I have no such knowledge.

Q It never came up?

A I have no such knowledge.

Q I believe you testified that prior to March 1, 1963 there was North American Continental that was a separate company from Continental Grain and it merged into Continental Grain in around March of 1963?

A Yes.

Q Prior to March of 1963 did Mr. Stafford ever report to you about activity in the North American Continental Company in the absence of Mr. Totah and Mr. Fribourg?

A No, sir. There was no reporting relationship.

Q In connection with your becoming a member of the Produce Exchange as an executive of Continental, do you recall whether there was any rule of the Produce Exchange requiring that you become a member

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THE COURT: All right.

MR. BERNFELD: Your Honor, I would like to ask Mr. Ferretti a series of questions that relate to these ex-pit transactions with Allied, and I believe that it might facilitate matters for the jury's understanding if we could put up the blackboard, just to mark down the number of transacdions so I can make sort of a pattern.

MR. LIMAN: I don't object to the use of the blackboard, but I do object to this speechmaking as to pattersn. If he wants to argue before your Honor, I think he can do that at the appropriate time, but it just draws a response from me, which is worse.

MR. BERNFELD: I didn't intend to make a speech, your Honor. May I put up the blackboard?

THE COURT: Yes.

(Pause.)

THE COURT: Ladies and gentlemen, I have told you about these kinds of exhibits and demonstrations. They are not the evidence. The evidence is in the documents themselves. They may be, I don't know, it may be helpful in your understanding what the basic evidence is.

Q Mr. Ferretti, turning to Plaintiff's Exhibit 255-A for identification --

MR. LIMAN: Is that soybean?

MR. BERNFELD: No, these are all cottonseed oil.

Q On April 25, 1963 Continental received 245 Produce Exchange warehouse receipts from Allied in an ex-pit transaction, is that correct?

MR. LIMAN: Objection to the form of that question. The document he is referring to shows they bought 245 warehouse receipts.

THE COURT: Are you going to put those documents in evidence?

MR. BERNFELD: Your Honor, we are going to be putting some of these documents into evidence. The point of going through this now is to demonstrate the wariness that Continental had with respect to --

THE COURT: I didn't ask you that. I asked you were you going to put it into evidence and the answer is yes or no.

MR. BERNFELD: I'm sorry, your Honor. Yes, sir. Would it facilitate matters if I offered it now? I will do that.

THE COURT: I would think that you are required to do that, before you start having any quoting from the document.

MR. LIMAN: I would like to state for the

record an objection to this whole area as irrelevant with respect to the issues in this case.

THE COURT: All right.

(Plaintiff's Exhibit 255-A received in evidence.)

MR. FRYER: As against whom, Mr. Bernfeld?

THE COURT: Well, we don't have to go through that. We know now that that is Continental Grain and somebody else is involved as to the defendants.

MR. FRYER: I just wanted to be clear, your Honor.

MR. BERNFELD: Your Honor, I also offer 255-B, C and D for identification.

THE COURT: These are four ex-pit transactions, I gather.

MR. BERNFELD: Four files relating to ex-pit transactions.

(Plaintiff's Exhibits 255-B, C and D received in evidence.)

Q Turning now to Plaintiff's Exhibit 255-A which is in evidence, Mr. Ferretti, am I correct that on April 25, 1963 Continental entered into a contract with Allied pursuant to which Continental was to receive from Allied 245 Produce Exchange warehouse receipts?

Is that correct?

MR. LIMAN: Your Honor, may I read the first line of a document in evidence that he insists on characterizing in an improper way, at least what I regard as an improper way. The document is a contract between Allied and Continental Grain dated April 25, 1963 and it says, "We confirm having purchased from you the following," and it says PBSY cottonseed oil.

And then it says, quantity, 245 warehouse receipts.

THE COURT: The second thing I want to raise, however, is that am I correct that this is a transaction that in all probability Mr. Totah or Mr. Stafford or someone else dealt with?

MR. LIMAN: Mr. Stafford handled the negotiations of these transactions and my understanding is that he is their next witness.

Mr. Ferretti did the documentation, prepared the contracts, kept the files.

THE COURT: I will tell you one thing that -- Mr. Harris isn't here -- you are either going to have to pick which one of them you are going to go through this with. We are not going to go through this with both Mr. Ferretti and Mr. Stafford.

MR. BERNFELD: I understand that, your Honor. The questions we had with respect to Mr. Stafford and Mr. Totah are going to relate to the negotiation and purpose of the transactions. The question with respect to Mr. Ferretti is with regard to the documentation and how the transactions flowed.

THE COURT: All right. Fine.

MR. BERNFELD: I believe there is an outstanding objection with respect to the framing of my question.

THE COURT: Mr. Liman indicated that your characterization was inappropriate. He has read what he indicates that the document reveals.

MR. BERNFELD: My question was whether pursuant to the contract there were to be Produce Exchange warehouse receipts received. I didn't comment upon the nature of the transaction. I wanted to know whether there were warehouse receipts that were to be received by Continental. It is the flow of the warehouse receipts that I'm interested in here, your Honor.

Q Is that correct, Mr. Ferretti?

A Yes, pursuant to the purchase we made from Allied, we did receive warehouse receipts.

Q And the number of those receipts?

A The contract stipulates 245.

Q And the 245 warehouse receipts in this transaction were ex-pitted against 245 July cottonseed oil futures contracts; is that correct?

A There were 245 contracts of futures ex-pitted, yes.

Q Turning to the fourth page clipped to the left

side of the folder, do these handwritten notations of which there are eight indicate the location of the warehouses upon which the registered receipts were issued?

A Yes, sir.

MR. LIMAN: Can I look at what your fourth page is because it may be my eighth page just so I can keep track of the examination.

(Pause.)

MR. LIMAN: Thank you.

Q I call your attention, Mr. Ferretti, to the second page on the right side of the file. I have checked off eight items here.

Do you see these eight items?

A Yes.

THE COURT: I think what you better do to save yourself the exercise, Mr. Liman, is to stay here.

MR. LIMAN: Am I correct that whatever he has checked off is not part of the exhibit in evidence?

MR. BERNFELD: I merely checked them off for Mr. Ferretti's convenience.

Q These eight check marks, do they describe the same number of warehouse receipts and the same locations that appear on the document that we just discussed

on the left side of the folder?

A I didn't make that check, you made it.

Q I made the check.

A Do you agree to it?

Q I do. I would like youto take a look at it.

A If they are the exact warehouse receipt numbers, then, in fact, they are.

Q Do you see here it says 51 warehouse receipts Drew Chemical Boston? That is the right side of the folder. Would that be the same 51 warehouse receipts Drew Boonton indicated on the left side of the file?

A More than likely it would be. In one instance you have the 41 Drew warehouse receipts spelled out by number. In the other instance we have just an indication which shows 51 warehouse receipts Drew Bocnton.

If the underlying records indicate that these are the same numbers, numbered warehouse receipts as these 51, then they match.

Q Let's proceed to the next one.

Do you see where it says 120 Hartsville Oil on the right side of the file?

A Yes.

Q Would that be the same 120 Hartsville Oil on the left side of the file?

A Again, I say in one instance you have identification by warehouse receipt number. If, in fact, these 120 bear the same warehouse receipt numbers, then, in fact, they are the same.

Q Would the same answer apply with respect to the three Maxtons on both sides of the file, the one Paymasters, the five Kershaw Oil, the 23 Wesson, the 32 Lever and the 10 C&T Refinery?

A Yes.

Q Would you accept my arithmetic that when I add up the eight numbers on both sides it indicates 245 warehouse receipts?

A Yes, if 245 is here, it is 245 here.

Q Thank you.

I turn to the first page on the right side of the file. Contract number S-5653 dated June 25, 1963.

Is this agreement --

THE COURT: You have got April.

MR. BERNFELD: April was the transaction on the left side of the file. Now we are turning to the corresponding transaction on the right side of the file of which I just described part of.

Q Is this a contract in which Continental sold 621 Produce Exchange warehouse receipts to Allied?

A Yes, sir.

Q Pursuant to this contract, were these warehouse receipts transferred to Allied?

A Yes, they were.

Q The eight items which I checked off on the second page total 245 warehouse receipts; is that correct?

A Yes, sir.

Q We have identified that at least in number those 245 warehouse receipts were distributed among eight locations and the exact same number as the 245 warehouse receipts in the 4/25 transaction; is that correct?

A Correct.

Q They were the same eight locations; is that correct?

THE COURT: 245?

MR. BERNFELD: Yes.

A Yes.

Q They were the same locations?

A Yes.

Q I'm going to put here in parenthesis 245.

Mr. Ferretti, these 245 warehouse receipts were transferred to Allied in connection with an ex-pit transaction that took place?

A They were transferred to Allied. They were sold to Allied in connection with a sale that we made to Allied.

Q Was that sale made in an ex-pit transaction?

A I believe it was.

Q Let me call your attention to your chart, Mr. Ferretti, which is Plaintiff's Exhibit --

MR. LIMAN: Would it facilitate matters if I stipulated to some of these facts?

MR. BERNFELD: No.

Q I call your attention to Plaintiff's --

MR. BERNFELD: Let me offer this. I would like to offer Plaintiff's Exhibit 256 for identification in evidence.

Any objection?

MR. LIMAN: Same objection as to relevancy.

THE COURT: All right.

(Plaintiff's Exhibit 256 for identification received in evidence.)

Q Plaintiff's Exhibit 256 in evidence, Mr. Ferretti, this is the list of ex-pit transactions with Allied that I believe you said you prepared 70 per cent of them and the rest of them was done under your supervision; is that correct?

A Yes.

Q Down at the bottom of the page where it says 6/25/63 sold, and the number 5653, is that this 6/25 transaction that we are talking about?

A Yes.

Q Thank you.

So, Mr. Ferretti, the folder which is 255-A in evidence encompasses two ex-pit transactions, is that correct, one on April 25th where there were 245 receipts received from Allied and one on 6/25 in which 621 receipts were transferred to Allied, including 245 receipts at the same location as in the April transaction; is that correct?

A Correct.

Q Thank you.

Turning to Plaintiff's 255-B in evidence.

Am I correct, Mr. Ferretti, that on July 32, 1963 Continental had an ex-pit transaction with Allied pursuant to which Continental received six Produce Exchange warehouse receipts under their contract number P-1504?

A In this particular instance it covered a purchase. You fail to mention purchase all the time. It is a purchase from Allied of 600 warehouse receipts

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dated July 31st.

Q That is 7/31. That is 600.

MR. LIMAN: Could do that.

MR. BERNFELD: Fine.

Q Continuing with the documentation on the left side of the folder, is it also true that Continental had a subsequent ex-pit with Allied -- that on August 2nd there was a subsequent ex-pit transaction with Allied pursuant to Continental contract P-1520, pursuant to which Continental received an additional 275 warehouse receipts from Allied; is that correct?

A Exactly. In accordance with our purchase 1520 we received these 275 warehouse receipts.

Q If my arithmetic is correct --

MR. LIMAN: It is 875.

MR. BERNFELD: It is 875. Thank you.

Q Turning to the material clipped on the right side of the file:

Were there 875 Produce Exchange warehouse receipts returned by Continental to Allied pursuant to your sales contract S-5844 dated August 27th?

A In accordance with our sale 5844 of August 21st --

Q August 27, 1963.

A -- we delivered to Allied 875 warehouse receipts.

Q Do the Continental invoices which appear on pages 2, 3, 5 and 6 of this file indicate the specific warehouse receipt numbers of each of the 875 warehouse receipts which Continental returned to Allied in this August 27th transaction?

A Yes, which we sold them.

Q Turning back just for a moment to the July 31st transaction and the August 2nd transaction, do we also find here in the file Allied invoices which indicate the specific 600 and 275 New York Produce Exchange warehouse receipts which were involved in the transaction?

A Yes, sir.

Q So in all then this file involves three ex-pit trades; is that correct; 7/31, 600; 8/2, 275 and then 8/27, a total of 875; is that correct? Three trades, is that correct, three different days?

A I don't know what you mean by three trades, three days. They are there.

Q Was there one ex-pit trade on 7/31 involving 600 contracts?

A Yes.

Q And a second ex-pit trade on August 2nd

involving 275 contracts?

A Yes.

Q And a third ex-pit trade on August 27th involving 875, right?

A Yes.

Q Okay.

So far we have five ex-pit trades involved in these first two transactions.

A If you want to characterize it like that.

Q Yes.

Would you take a look at your purchase order P1504 and your sales order S5844 which are involved in this exhibit. I believe that there was one more contract which Mr. Liman gave to us dated August 2, 1963, your contract P1520.

MR. LIMAN: That was inthe file you gave to me as part of one exhibit which was Exhibit 255B. You put them together in one file, not me.

MR. BERNFELD: I will accept Mr. Liman's correction.

Q Do the purchase and sale orders with respect to these ex-pit trades describe the price at which the warehouse receipts were bought and sold?

A Yes.

Q Do any of the purchase orders or sales orders refer to any interest which Allied paid to Continental on these transactions?

A No, the purchase and the sales do not refer to any interest.

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Q Do you know whether Allied paid Continental interest on these transactions?

A Allied in these particular instances -- it was computed in the prices. It was part of the difference between the purchase of the cash and the price set on the ex-pits.

Q So your answer is there was interest included in the transaction, it just doesn't show up on the form; is that correct? It doesn't show up as interest on the purchase or the sale order?

A Exactly.

Q Okay.

Do any of the three purchase or sales orders refer to any guaranteed profit to be received by Continental on this transaction?

A No, sir.

Q Do you know whether Continental received any guaranteed profit on these transactions?

A I don't know what you mean by guaranteed profit.

Q Do you know whether Allied made a promise to Continental that Continental would receive a minimum profit of $2 per metric ton or 9 cents per hundredweight on these ex-pit transactions?

A To the best of my recollection, this particular transaction -- this particular type transaction was computed aside from expenses where Continental would make approximately $2 a ton profit.

Q My question, Mr. Ferretti, is do you know whether Allied guaranteed this profit to Continental?

MR. LIMAN: Objection to the form, your Honor.

I think that Mr. Bernfeld knows very well that if you take the difference between a futures price and the cash price you get a margin which is the 9 points per hundred that he's talking about. There's nothing in here about a guaranteed profit. It works out that if you buy cash and sell futures and the differential is this, that's what a margin is.

MR. BERNFELD: May I have the same objection to speeches.

THE COURT: You are entitled to it.

I understand. I think what Mr. Bernfeld has reference to, we have had some testimony before in connection with Allied's dealing I believe with Bunge in which the contract between Allied and Bunge guaranteed, specifically guaranteed $2 per ton.

I suppose the question is whether or not the

transaction with Allied in this instance, whether there was such a specific guarantee in the contract. We had no specific written guarantee with respect to what testimony might have been given with respect to someone else.

THE COURT: I didn't ask that, but whether in the contract you had with Allied thatAllied made a specific promise to you that you were to get this kind of margin. That's what the question is.

THE WITNESS: No, your Honor.

THE COURT: All right.

Q So, Mr. Ferretti, my question is, is there any reference to any guaranteed profit in any of the purchase or sales contracts in this file?

A No, sir.

Q You have no personal knowledge whether there was any agreement, oral, between Continental and Allied that Continental was to receive a guaranteed profit in connection with this transaction?

A The negotiations --

Q Personal knowledge, Mr. Ferretti. If you don't have it, I will ask the next witness.

A Yes, do that.

Q Okay, fine.

I would like to turn to the next folder, which is Plaintiff's Exhibit 255C in evidence.

MR. BERNFELD: Mr. Liman, do you have a copy of that there?

(Pause)

Q I show you Continenental's contract P1902 dated October 30, 1963.

Does this call for the receipt by Continental of 200 produce exchange warehouse receipts in connection with an ex-pit transaction with Allied?

A Yes, it calls for the purchase of 200 warehouse reciepts that we bought from Allied on October 30th.

Q Am I correct, Mr. Ferretti, that in these October 30 ex-pit transactions, when Continental received 200 registered warehouse receipts from Allied it sold an equivalent number of futures contracts to Allied?

A I believe so.

Q This was the same pattern as in the previous transactions; is that correct?

A I believe so.

Q I show you next the second page clipped to the left side of the file which is Alliedinvoice

to Continental dated 10/30/63.

Does this invoice refer to one half of the 200 produce exchange warehouse receipts involved in this transaction?

A It's an invoice for 100 warehouse receipts.

Q Same date as your October 30 contract; is that correct?

A Exactly.

Q Do you see at the bottom a handwritten notation which says, "Hook on, paid 10/30, part P1902"? Does that refresh your recollection that these were one half of the 200 warehouse receipts involved in this transaction?

A No, that doesn't refresh my recollection on what you are trying to tell me. It has a different significance entirely.

Q Is this your handwriting or do you recognize it?

A I recognize -- no, this is not my handwriting. I recognize -- I know what it means.

Q It means to you that this invoice --

THE COURT: Why don't you ask him to tell us what it means.

Q What does it mean?

A It means on occasion we make a check request on a particular form and we get the check back from the accounting department on the basis of a written form and subsequently we get -- it could be later in the day where we have this invoice where it's thoroughly checked. When it is thoroughly checked we put hook on paid such and such a d ate. He hooks the original invoice onto the voucher which is a check request.

Q Do you recall, Mr. Ferretti, that you provided plaintiff's counsel with this invoice as representing part of the transaction which is P1902, that this came out of your file relating to P1902?

A Yes.

Q Thank you.

Turning next to the second invoice --

MR. LIMAN: I object,yourHonor, on the grounds of relevancy. There are invoices that show that they received 200 receipts or paid for 200 receipts. Why do we have to go through it in this laborious way?

THE COURT: I don't know where he's going. Until I'm sure one way or the other, I will let him go.

MR. BERNFELD: Thank you, your Honor.

Q The 7th page down in the file, is this a

separate second invoice from Allied relating to 100 produce exchange warehouse receipts, 13 at Paymasters Oil, 87 Mondheim in Newark?

A Yes.

Q Does this complete the 200 warehouse receipts involved in P1902?

A Yes, sir.

Q Thank you.

I show you next still on the left side of the file Continental contract P1908 dated October 31, 1963.

Pursuant to this contract did Continental receive 316 produce exchange warehouse receipts from Allied?

A Yes, sir.

Q I show you next the invoice of Allied behind it dated 11/1/63, where it is handwritten on it 1908.

Does that refer to the same transaction?

A Yes, sir, it does.

Q This specifies the four locations at which 166 New York Produce Exchange warehouse receipts were located?

A Correct.

Q All right.

Then a few pages further on in the file a second invoice of November 1 referrign to 150 produce

exchange receipts?

A Correct.

Q All right.

With six different locations, right?

A Yes.

Q That 150 and the 166 is the 316 receipts involved in that transaction?

A Right.

MR. BERNFELD: I see that Mr. Liman has done me a favor or bracketing off the two numbers to show that there were 516 produce exchange warehouse receipts involved in these two transactions together.

Q Turning to the right side of right side of the file?

Pursuant to Continental contract S6203 dated 11/15/1963, was Continental to deliver 516 produce exchange warehouse receipts to Allied?

A Yes. On November 13 we sold to Allied as part of our trading on that particular day -- we sold 516 warehouse receipts as per this particular same number.

Q Because this number is coming up, I'm going to write the same number next to it. That's S6203.

A Yes, correct.

Q Now, in this file, then, we have three

ex-pit transactions, is that correct? The one on the 30th and the 31st of October and the one on the 15th of November?

A Yes.

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Q Do any of the purchase or sales contracts in this file indicate that Continental was to receive any interest from Allied?

A No, sir.

Q Do any of the purchase or sales orders in this file or for that matter any other document, and I refer back to my earlier questions, any document in the file, indicate that Continental was supposed to receive a guaranteed profit on these transactions?

A No, sir.

Q Mr. Ferretti, I would appreciate it if you could explain a further feature of this November 15, 1963 contract.

A Surely.

Q Do you see where it indicates payment, the phrase"washout against our purchase P1984 of November 15th"?

A Yes, sir.

Q Could you tell us what that refers to?

A Well, it refers to a purchase that we made on November 15 from Allied of, again, 516 warehouse receipts, I believe at the same price, the identical price of $13.38 per hundred pounds basis in store, New York.

Q Is that the transaction referred to in 255D in evidence?

A Yes, it is.

Q What was the number of that transaction ?

A Purchase 1984 dated November 15.

Q Mr. Ferretti, did Allied make a cash payment to Continental in connection with your sale to them of registered warehouse receipts under contract S6203, the first 516 involved on November 15?

A That corresponds with the terms of the contract they were not required to pay us cash.

Q Did both of these transactions actually take place on the 15th, S6203 and P1984?

A Yes, they did.

Q To your knowledge, were they both reported to the produce exchange?

A Yes.

Q Pursuant to the ex-pit rules of the produce exchange?

A Yes.

Q As involving an actual change in ownership?

A Yes, sir.

Q With respect to the 516 warehouse receipts involved in S6203, were those 516 warehouse receipts ever

delivered to Allied?

A It was not necessary for them to be delivered to Allied on account of the provisions of the contract which referred to our purchase 1984.

Q So your testimony is in fact they were not delivered to Allied, is that correct?

A They were not delivered to Allied, in accordance with the term of the contract.

MR. LIMAN: Are you finished with me, Mr. Bernfeld?

MR. BERNFELD: At the blackboard, yes. Thank you.

(Pause)

Q Continuing with Plaintiff's Exhibit 255C in evidence, I call your attention to the second page clipped to t he right side of the file relating to transaction S6203.

Do you recognize this as a Continental Grain form?

A Yes, sir.

Q Does this form also indicate that the transaction was a washout against a purchase of the same date?

A Yes, sir.

Q And it relates to the 516 warehouse receipts from 1984?

A Yes, sir.

Q Do you recognize this as the reverse side of that form?

A Yes, sir.

Q Do you see where it says washout, once again?

A Yes.

Q And P1984?

A Yes.

Q Would you note also, Mr. Ferretti, that it says no equity?

A Exactly.

Q Mr. Ferretti, isn't it true that Continental had no equity interest in the ownership of the warehouse receipts involved in this transaction?

A Continental Grain definitely had an equity in that particular transaction. Continental did not have an equity in that which involved a purchase P1984 and sale S6203.

Q Would you elaborate on that, sir?

A Yes. There was no equity on account that we had sold 516 warehouse receipts at 1358 on that

particular day and purchased about the same time or on that particular day, purchase 1984, 516 warehouse receipts at again 1358, I believe, the same price, and therefore there was no equity and therefore there was no reason for invoicing, which is common in this particular business.

Q I call your attention to the second and third pages in 255D in evidence relating to T1984 itself.

Is this a similar form of Continental which also refers to no equity?

A It's the same thing.

Q Is that your handwriting, Mr. Ferretti?

A No, sir.

Q Do you recognize the handwriting where it says no equity?

A I believe I do.

Q Whose handwriting is it?

A I believe this was the handwriting of Marty Glickman.

Q Marty Glickman --

A He is a clerk.

Q Is that the same Marty Glickman that periodically signed ex-pit letters that went to the produce

exchange?

A Yes, we only have one Marty Glickman.

MR. O'DONNELL: He is not the one on the radio.

THE COURT: I was wondering why the name sounded so familiar.

Q I show you a letter contained in the file, Plaintiff's Exhibit 62 in evidence, dated November 15, 1963 and ask you whether this letter refers to the same 516 contracts that were sold pursuant to S6203 in Plaintiff's Exhibit 55C for identification.

MR. LIMAN: You say in the file. What file are you now talking about?

MR. BERNFELD: I said 62 in evidence.

MR. LIMAN: All right.

A Yes, I believe so.

Q Mr. Ferretti, who at Continental physically handled registered warehouse receipts that were transferred into or out of Continental in connection with ex-pit transactions?

A I would principally. I would touch them all.

Q Does that mean you would supervise them?

A Yes. And I would handle them, yes.

Q To make sure that they weren't damaged or mutilated and in deliverable form?

A No, very often I had to endorse them or give them to somebody to endorse, or see that the proper endorsements were on them.

Q Does that mean that you would place Continental's stamp on it as an endorsement?

A If I wouldn't do it, I would direct somebody to do that.

Q Who would that be?

A It would be one of many people.

Q But you would see it before it went out, is that correct?

A I would see what?

Q You would see endorsed registered warehouse receipts before they were delivered out?

A Delivered out of where? You mean when we were selling someone?

Q Yes.

A Absolutely, yes.

Q I call your attention to P1908 on the blackboard -- excuse me, I don't have that transaction marked -- I will mark it. This one here which involved 316. That was part of he 516 on these two days, is that

correct?

A Yes.

Q On the left side of the file 25AC for identification, I refer back to the invoice of Allied which you identified as relating to P1908?

A Exactly.

Q And it indicates the location of the warehouse receipts?

A Yes, sir.

Q It indicates 43 of them in Hartsville?

A Yes, sir.

Q And 15 in Anderson, Clayton?

A Yes.

Q Three Wesson Oil, Bayonne?

Q And 105 Bunge Corporation, Bayonne?

A Yes, sir.

Q I show you, Mr. Ferretti, Plaintiff's Exhibit 238 for identification, which consists of 105 Bunge Corporation warehouse receipts. I ask you to take a look.

Do you see on the back of 258A for identification a series of endorsements?

A Yes, sir.

Q Do you see the endorsement of Continental

Grain?

A Yes, sir.

Q Did you place the endorsement on this?

A Did I place the stamp or the signature?

Q The stamp, first.

A It is possible, but it's not probable.

Q Did you place the signature?

A It's not my signature.

Q Do you recognize it?

A Yes, sir.

Q Whose signature is it?

A Mr. Elliot Zichlinsky.

Q Did this gentleman work under your supervision?

A He worked in the finance end where they would sign warehouse receipts and bills of lading, because we had many of them.

Q In any event, this would be one of the registered warehouse receipts that you would supervise, you would review before they were delivered out, is that correct?

A Yes, sir.

Q We have a file of these here; I'm not going to ask you to look at each of them. We'll just look at the next couple. Do you see a Continental Grain

stamp on each of them?

A Yes, there is no question about it.

MR. LIMAN: Your Honor, is it necessary to go through this? If he can represent that there is a Continental stamp on each one --

MR. BERNFELD: I represent there are.

Q Would this be the same 105 Bunge warehouse receipts, as on P1980 where it states Bunge warehouse?

A I'm 99 per cent sure because the numbers of the warehouse receipts that were issued by Bunge Corporation, the individual numbers are not on this particular invoice. These individual warehouse receipts are numbered. If in fact these number 105, I assume that these are the same 105.

MR. BERNFELD: Your Honor, I offer Plaintiff's Exhibit 238A for identification, one of the contracts involved --

MR. LIMAN: I object on the ground of relevance. I don't think this has anything whatsoever to do with the issues in this lawsuit.

MR. MINNEROP: Your Honor, I further object because that particular one is unique among all of them, as we have discussed at a side bar conference.

MR. BERNFELD: I offer all of them, your Honor.

MR. LIMAN: Then I have 105 objects as to relevance, your Honor.

MR. O'DONNELL: Against whom are you offering them?

MR. BERNFELD: At this juncture I am offering them against Continental Grain and Mr. Vogel, and the New York Produce Exchange.

MR. LIMAN: I'd like a voir dire with respect to Mr. Vogel.

MR. O'DONNELL: The produce exchange never saw them, your Honor.

MR. BERNFELD: Your Honor, it bears a stamp of the Produce Exchange, secretary's registration, C. R. Berg.

MR. O'DONNELL: We saw them at the outset and at the end.

THE COURT: You saw them at the outset and when they were cancelled.

MR. BERNFELD: I would like to offer them as well as against Merrill Lynch and the Bunge Corporation, whose stamps appear on the back of them.

MR. LIMAN: I don't want to make a tempest in a teapot. My objection is as to relevance.

MR. BERNFELD: I will offer one or all of them, your Honor.

THE COURT: I don't understand what you are offering them for, so what I will do is, you have a tentative, I'm going to admit them tentatively until I find out what their purpose is, and I gather that is going to come at some point. If I find it is relevant I will allow them to stay in. If not, I am going to throw them out. But at this point they are tentatively received.

MR. MINNEROP: All of them, your Honor?

THE COURT: I think that is the better thing

to do, since there is some objection about some of them. We will take all 105 of them.

(Plaintiff's Exhibit 238 received in evidence.)

MR. MINNEROP: Your Honor, may I also ask, since these warehouse receipts are numbered, the one numbered 235-A, which is 242, be placed back in the sequence where it belongs.

MR. BERNFELD: Fine, your Honor.

THE COURT: Let's proceed, Mr. Bernfeld.

Q Mr. Ferretti, isn't it true that Continental Grain kept those 105 warehouse receipts issued by Bunge in connection with transaction P-1908 when there was this washout transaction which you have indicated as S-6203 and P-1984?

Didn't they maintain those warehouse receipts in their possession?

A Yes, sir.

Q So those warehouse receipts never changed hands, is that right? They never went back to Allied in connection with the sale S-6203?

A That is correct.

THE COURT: Am I to understand that not only those 105, but all 516 of those receipts that are

involved in 10/30 and 10/31 and 11/5 --

MR. BERNFELD: I just want to point out that --

THE COURT: I am asking you a question now, Mr. Bernfeld. Am I to understand that those, the two transactions when there was a purchase of 516 warehouse receipts from Allied and then -- on October 10th and October 21st, and then there was a sale back to Allied of 516 which were the same warehouse receipts involved, and then in turn on the same day they were purchased back by Continental Grain.

All 516 of the warehouse receipts that were involved in that transaction, once they were purchased, never left Continental Grain.

MR. BERNFELD: Yes, sir.

THE COURT: Not only the 105, but all 516.

MR. BERNFELD: Excactly. The 103 was part of the 516, that is the only reason I think I did.

THE COURT: I wanted to be sure that I understood that none of them left.

MR. BERNFELD: I'm sorry, your Honor. None of them left.

THE COURT: All right.

MR. BERNFELD: Your Honor, now I ask permission to read the letter which Mr. Ferretti has identified of

62 in evidence of the 15th, written by M. Glickman, which is written to the New York Produce Exchange describing 6203.

MR. LIMAN: I have no objection. I intend to read Haupt's letter on the same transaction, your Honor.

THE COURT: All right, read it.

(Mr. Bernfeld read from Exhibit 62 in evidence.)

MR. BERNFELD: The 516 relate to S-6203 and that the Produce Exchange received the clearing number.

THE COURT: Why don't you read the letter?

(Mr. Bernfeld continued reading to the jury from Plaintiff's Exhibit 62 in evidence.)

MR. BERNFELD: The letter of November 18th coming back from Mr. Berg confirms the receipt of this letter, and I'd just like to read one paragraph.

"We note that you state that the above transaction was made in accordance with Rule 6-B of the cottonseed oil futures contracts involving a change of ownership and the document exchanged were cash contracts representing commodity PBSY cottonseed oil."

THE COURT: What kind of contract is that?

MR. BERNFELD: Cash contracts.

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THE COURT: All right.

Q Mr. Ferretti, when Continental made out its sale contract S-6203, to your knowledge did Continental intend to represent that there was an actual sale of 516 Produce Exchange warehouse receipts and a company change of ownership of these received from Continental to Allied.

MR. LIMAN: Objection to the form of that question, your Honor. Are you asking about a sales contract?

THE COURT: Yes, he is asking about the contract of sale on the 15th of November. The objection is overruled.

THE WITNESS: Would you repeat the question?

(Question read.)

THE COURT: Did Continental intend that that transaction S-6203 should constitute a change of ownership?

THE WITNESS: To the best of my knowledge, they did. I don't know the exact moment in time that S-6203 was completed as against the purchase 1984.

Q Generally speaking, Mr. Ferretti, when Continental transfers out registered warehouse receipts to a customer, does it make out a sales invoice?

MR. LIMAN: Objection to the form of that question and the relevance as to what is customarily done at Continental.

THE COURT: Objection overruled.

A Would you repeat the question, please?

Q Surely, Mr. Ferretti.

In the ordinary course of Continental's business when it transfers out registered warehouse receipts to a customer does it generally make out a sales invoice?

A It generally makes out a sales invoice where there is certain to be changed, but in this particlare instance where there was inequity it was not customary to make out an invoice because there was no equity involved, so it was superfluous to make out an invoice.

Q Was it customary that there was no equity involved in an ex-pit transaction?

THE COURT: I don't understand that question.

Q Mr. Ferretti, you have indicated that no sales invoice would be made out where there was no equity in the transaction?

THE COURT: We know what that transaction is. Another 15 he has testified they sold to Allied 516 of those warehouse receipts and bought them back at

the same price.

MR. BERNFELD: Yes, your Honor.

THE COURT: He indicated to us that there is why there was no equity, because it was the same kind of transaction, bought and sold for the same amount.

Q In all, in these folders, am I correct that there was nine ex-pit transactions involved?

A When you say ex-pit transactions involved, do you remember groupings or letters or trades --

Q Trades. Ex-pit trades.

A You could say that, yes.

Q And with respect to the trade on 11/15, you not only reported to the Exchange 516 warehouse receipts sold but you also reported 516 warehouse receipts purchased?

A Yes, absolutely.

Q So in total on that day you reported 1,032 warehouse receipts to the New York Produce Exchange?

A That is correct, ex-pit transactions involving a total --

A We reported two transactions.

Q Are you familiar, Mr. Ferretti, with the fact that on the New York Produce Exchange ex-pit trades are posted so that people in the trade and on the floor

can observe that a trade has taken place ex-pit?

A From listening to the testimony in this court, I so find out.

Q Isn't it true, Mr. Ferretti, that when they would see this posting of 1,032 warehouse receipts involved in ex-pit transactions, that they would assume that there was actual activity, cash activity involving 1,032?

A I have no idea what anybody would be thinking.

MR. LIMAN: Objection.

THE COURT: The objection is sustained, plus the fact that I don't see where this is of any relevance here. The only relevance I can see for this is an establishment that it was contrary to the rules of the Exchange. It hasn't got anything to do with what people think.

MR. BERNFELD: I'm sorry, your Honor. I am going to go to my next line of questions.

Q On Friday I believe you indicated that you were familiar with the rules of the New York Produce Exchange pertaining to ex-pit trades, is that correct?

A Somewhat.

Q I believe you indicated that you tried to comply with the rules relating to it?

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AFTERNOON SESSION

2:00 p.m.

(In open court, jury present.)

J O H N F E R R E T T I, resumed the stand and testified further as follows:

THE COURT: Mr. Bernfeld.

REDIRECT EXAMINATION

BY MR. BERNFELD (Continued):

MR. BERNFELD: I seem to have misplaced a document, your Honor.

MR. LIMAN: Do I have a copy? Can I help you?

MR. BERNFELD: No.

(Pause.)

THE COURT: You were last dealing with the rules of the Exchange.

Is that the document?

MR. BERNFELD: Yes. I will come back to it.

Q Mr. Ferretti, on the ex-pit transactions that are up on the blackboard, I would like to ask you aboxt the futures side of the transaction. We have talked about the cash side.

Do you recall what futures month was involved in connection with the two transactions that appear as

10/30/63 and 10/31/63?

A Yes, I do.

Q What was the futures month involved in that transaction?

A I believe the month was December.

Q In that transaction when Continental received the receipts, it went short December futures 516; is that correct?

A Yes, sir.

Q Perhaps it would be easier if I go on the other side of the blackboard.

A That's all right.

Q Do you recall what the futures month was in connection with the 11/15 transaction, which is S-6203 involving 516 --

A That was December.

Q But in this instance when Continental was transferring receipts to Allied, it bought futures contracts; is that right?

A Exactly.

Q Wouldn't it be correct to state that the futures position in connection with S-6203 offset or cancelled out the December short position established in connection with the two October transactions?

A That is correct, yes.

Q Do you recall why Continental engaged in this transaction where they bought 516 warehouse receipts from Allied and then sold 516 warehouse receipts to Allied cancelling out the concomitant futures position?

A Well, I believe it was -- the purchase 1984 established a purchase at 1,358 or whatever price it was.

Q Excuse me. 1984 I believe is the bottom transaction. I'm referring to the two October transactions and the first November 15th transaction.

A Yes.

Q Do you recall what the purpose was in engaging in that transaction?

MR. LIMAN: Objection to the form.

Which one?

On October 30th,31st or November?

MR. BERNFELD: The involving P-1908 plus the parallel transaction on 10/30/63 and the transaction involving S-6203 on November 15th.

MR. LIMAN: Objection to the form.

Q Mr. Ferretti, in these transactions, P-1908 and S-6203, did Continental at the time of S-6203 offset or cancel out a futures position which

it had established in connection with two ex-pit transactions which took place in October?

A What the effect of it was, on 1908 we were long the warehouse receipts, the 516, and we were short 516 at that particular time, December futures contracts.

When we sold the warehouse receipts to Allied on November 15th, we bought back as we reported it these 516 Decembers, December futures.

Q So the net effect was to cancel out the futures position and to sell back 516 warehouse receipts to Allied; is that correct?

A Yes. We sold bac the cash as a sale. We sold them back the cash and we had to undo the position. So we undid it by reversing -- not reversing, but first we were short the December futures and then we bought them back on an ex-pit under the 6203.

THE COURT: I don't understand, Mr. Bernfeld. The issue between 10/30 and 10/31 -- it seems to me it is clear what occurred. On 10/30 and 10/31 they purchased those 516 in terms of the futures, and I gather on the 16th that trade was cancelled out.

I suppose they could have held them for a few more weeks.

Q What I am getting at next, in fact, the

warehouse receipts did not go back to Allied but there was this wash out transaction involving --

THE COURT: The point is, you ought to be talking about the transactions on 11/15.

MR. BERNFELD: Thatis what I am talking about now, your Honor.

Q The two transactions on 11/15, in fact, involved a wash out. In other words, the receipts did not go back to Allied but you kept them; is that right?

A You could use the word wash out. Wash out is a funny word that many people use differently. We had a separate sale, 6203, and we purchased back 1984, 516 warehouse receipts, at which time we assumed the position, a short position in March, futures in March.

Q Instead of having 516 Decembers, you cancelled that out and ended up with 516 short March in connection with P-1984?

A That was the result. That was the result. We were no longer short December, we were short March.

Q All right.

Is this known as rolling forward a position?

A You could call it many, many things. It is changing of position. You call it rolling, whatever you want to call it.

Q Did the rolling or changing of position then take place outside of the pit?

A Yes.

THE COURT: You have already said it was an ex-pit transaction.

Q Was the purpose of rolling forward this position outside of the pit to enable Allied to have an extended loan?

A I wasn't in discussion with Mr. Allied so I really can't say.

Q To your knowledge, Mr. Ferretti, did Continental ever tell the Commodity Exchange Authority that these ex-pit transactions, which are up on the Board, involved a loan to Allied?

MR. LIMAN: I object to the form in that it assumes a conclusion which is contrary to what this witness has testified to.

A I don't think the Exchange ever asked us.

Q Did you testify on Friday that these transactions could be construed as financing transactions?

A One might c-nstrue them as financing.

Q Did you ever convey --

A However, they were outright purchases on our part. To some people they could be construed as financing.

substantially?

A Where are we going from?

Q From the 14th, 3910 short, to the close of business on the 18th, 3917 short.

A I believe so.

MR. LIMAN: Futures only.

MR. BERNFELD: Futures only.

Q So between the 14th at the close of business and the 18th, the two oils combined, Continental actually increased its short position seven contracts, is that right, short position in futures only?

A In futures only.

Q Mr. Ferretti, are the two oils, cottonseed oil and soybean oil, interrelated?

THE COURT: Come on.

MR. O'DONNELL: Objection.

THE COURT: We are not going to go into that.

MR. BERNFELD: Yes, your Honor.

Q On Friday, Mr. Ferretti, Mr. Liman referred you to the $34,800,000 of loans which Continental made to Allied and some 40 to 45 million dollars of Continental purchases.

Do you recall that?

gr11 Ferretti-redirect [4066]

REDIRECT EXAMINATION CONTINUED

BY MR. BERNFELD:

Q I call your attention to Plaintiff's Exhibit 258 in evidence and ask you whether this document reflects that on Continental's position in cottonseed oil futures from the close of business on the 14th to the close of business on the 20th -- that for its own account Continental showed a gain on its futures contracts of $1,510,476? Does it show that?

A Can I explain what it is?

Q I would like to know whether --

A There's a figure that says $1,519,476 and it reflects the Continental Oil position, the beginning position as of November 14, which was a cumulative position, plus subsequent tradings on November 15, 18, 19 and 20 without taking into account any cash activity whatsoever.

Q Does the third page similarly reflect a gain with respect to an account at Merrill Lynch on the same basis?

A Yes, it does

Q Does it reflect a gain of close to $600,000 on the same basis?

A The 600,000 again represents the gain

difference with respect to Continental's position as it held with Merrill Lynch, the cumulative position beginning prior to November 15, and there were no trades -- there were no trades during -- from the 15th to the 20th with Merrill Lynch.

Q How was it that between the 15th and the 20th on your futures position at Merrill Lynch alone you showed a gain of close to $600,000?

A This, Mr. Neufeld --

Q Mr. Bernfeld.

A Mr. Bernfeld, reflects a position that we had on the futures market with Merrill Lynch. This reflects that we had a gain of $599,000 on the futures transactions. At the same time we were holding warehouse receipts which had a comparable weighted value and we lost -- we had a deterioration in a position similar to $600,000 that we gained on this side. This is the whole principle of hedging, which is not reflected in these sheets.

Q This $600,000 gain in the Merrill Lynch account, futures only, is in addition to the one million five hundred gain?

A Yes, sir.

Q In all it was more like $2,100,00 gain on

Continental's futures position?

A Yes.

Q Mr. Ferretti, did Continental receive back variation margin payments from the New York Produce Exchange Clearing Association as the market declined between November 14 and the close of the market, November 19, 1963?

A Yes, sir.

Q Is it as a result of those variation margin payments between the 14th and the 19th that Continental received the $2,100,000 gain on its futures position only indicated on this document which Continental prepared?

A Yes, sir.

Q Mr. Ferretti, I show you next Plaintiff's Exhibit 150 for identification.

Did you have the opportunity to review this chart prior to coming here today?

A Yes, sir.

Q And dealing with Continental's futures position only, putting aside the cash position --

MR. LIMAN: Objection, your Honor. If he's going into soybean oil, it's irrelevant, outside the scope of any possible redirect. I think he's

gr15 Ferretti-redirect [4070]

Now what he wants to do is to pretend we didn't have an offsetting cash position and try to extract from one of his own exhibits, which your Honor has not ruled is admissible, what our gain was on the futures side without looking at the cash side. I think that's really going beyond any bounds of relevance for this trial.

THE COURT: The position of Continental grain as of that date, the net position in soybean oil I think we have already established.

MR. BERNFELD: We did as tothe position, your Honor.

THE COURT: I don't understand that in soybean oil, at least on this exchange they were receiving any margin as the market went up and down.

MR. BERNFELD: No, your Honor. They were receiving margin in another exchange.

THE COURT: The point is that the objection is sustained.

Q Mr. Ferretti, did Continental receive variation -- return of variation margin, variation margin payments on their soybean oil position between the 14th and the 19th?

MR. LIMAN: Didn't you just rule on that, your

Honor?

THE COURT: That has nothing to do with this case, whether they did or not. You are charging them on something they did on the New York Produce Exchange. The objection is sustained.

Let's move on.

MR. BERNFELD: Just one moment to review my notes, your Honor.

(Pause)

MR. BERNFELD: I just have two further questions then, your Honor.

Q With respect to Defendants' Exhibit 154 in evidence, I call your attention to the item marked November 15, 1963, 516 December contracts purchased and the column which says ($746,136), and ask what does that refer to?

A When you have a figure -- up on top it says in parenthesis -- it means loss. Without parenthesis it means gain. That's what it is. You don't have to ask.

Q Right below it we see November 15, 1963 March, sold 541 and then it shows 830,000 gain; is that correct?

A Correct.

Q In this 541 sold, does that include S6203?

gr17 Ferretti-redirect [4072]

A I believe so.

Q In the figure which says 516 bought, does that include the $746,000?

A I'm quite certain.

THE COURT: Mr. Liman, you can sit down. You are not going to be deprived of our cross-examination.

(Pause)

Q Mr. Ferretti, would you please explain how you calculated a loss of $100,000 on your position?

A Well, in order for me to calculate the loss of the 101,988, I would have to explain how I would calculate each of the individual items comprising -- composing the $100,988 loss.

Q What was the relationship between the figures on your Defendants' Exhibit 154 and the amount of money that Continental received on the closing of the market on November 20, 1963?

A They are two different things. This position represents the activity of the buying and selling between November 14and 19. This is the result. We lost $100,988 in our actual trading between November 14 and November 19.

Q Do you recall how much money Continental received back when the market closed on November 20 on

has the Trustee of Allied or any other trustee suggested to you that you weren't the owner?

MR. BERNFELD: Objection, your Honor.

THE COURT: Overruled.

A No, sir.

THE COURT: Is that all?

MR. LIMAN: I think so, your Honor.

No further questions.

THE COURT: We will take a one minute recess.

(Jury left the courtroom.)

(Recess.)

(Jury entered the courtroom.)

MR. LIMAN: Your Honor, on 154 which you overruled the objection to, the clerk hasn't marked it yet.

THE COURT: Mark 154 as being received.

(Defendant's Exhibit 154 received in evidence.)

MR.MINNEROP: Your Honor, I take it the clerk will mark all of these only as against certain defendants as previously instructed.

MR. LIMAN: That is my exhibit.

THE COURT: I think Mr. Minnerop takes the same position.

to go into this. To say that the loss should be in there but it again should be in there doesn't make any sense.

MR. BERNFELD: It is very simple, your Honor, the 516 long was not part of Continental's position because it was closed out on this round trip transaction so it was not part of their position on the 15th, and therefore that $746,000 loss is misleading and has no business being in that chart.

THE COURT: I think that is something for you to argue. Certainly I don't think it is anything that you can get out here.

MR. LIMAN: Your Honor, there is no way that if you are as he concedes a net buyer in this period you can't be anything but a net loser. I don't know what all of this is about.

THE COURT: The point is, it certainly is argument. I presume you will have the opportunity to argue it, but not now.

Q Mr. Ferretti, as Continental was receiving variation margin payments during the last week when the market for cottonseed oil futures was dropping, did Continental sell off any of its cash position?

A Not to my knowledge.

elrf 10 Ferretti-redirect [4101]

Q Isn't it correct that cash cottonseed oil rebounded in value after the overhang was removed from the market, when the contracts were closed out?

A It could have been. I don't have the prices in front of me so I don't recollect.

Q And isn't it a further fact, Mr. Ferretti, that in the event that that occurred, Continental did not actually lose money on its cash position?

THE COURT: Yes, but Mr. Bernfeld, that has nothing to do with the case.

MR. BERNFELD: Your Honor, I believe it does.

THE COURT: The issue that is involved in this case as far as I can understand it is to whether or not Mr. Vogel, not speaking of Continental, as a member of the Exchange before the 14th carried out his duties in respect of his oversight of the commodities market. And the other position is that after the 14th, as to whether or not in terms of the action that they took, that they took this action in order to gain some profit to themselves.

That is your position, and it has to be something that you can foresee, it seems to me, as either on the 14th, 15th, 16th, 17th, 18th or 19th, and not

something that occurs that you could not have foreseen at that time.

Keep your questions focused at least on those issues, if that is what the case is.

Q Mr. Ferretti, Mr. Liman called your attention to the Gobel collateral that was discussed on Friday.

A Yes, sir.

Q And certain written documents relating to that?

A Yes, sir.

Q At the time that you gave that testimony in 1965, did you know of the existence of those documents? At the time you gave that pretrial testimony in 1963 --

MR. LIMAN: Your Honor, what is the relevance --

A Absolutely.

THE COURT: What relevance does that make?

MR. BERNFELD: Mr. Liman made it seem as if I was trying to mislead the witness. This was his pre-trial testimony of one example of an oral agreement. That is why I brought it up.

THE COURT: You are not here to do that, Mr. Bernfeld. You are here to explore this case and advance anything in it.

Q You held that position from 1968 until 1963?

A Yes.

Q Did you continue as chief trader throughout 1963?

A Yes.

Q Did you regularly report to Continental's vice-president Rafael Totah concerning the trading activity in vegetable oils?

A Yes.

Q In Mr. Totah's absence to whom would you report?

A When Mr. Totah was absent there was almost always a way of reaching him. He called into the office and we generally were able to speak by phone, no matter where he was.

Q Were there occasions in Mr. Totah's absence when you would report to Mr. Fribourg, the president of the company?

A That would never happen at my initiative.

THE COURT: Mr. Bernfeld, I hope that you are not looking at what I think you are about to do.

MR. BERNFELD: I'm looking at Mr. Stafford's pre-trial deposition testimony in this action.

THE COURT: I know. We are not going to get involved in whether or not he reported to Mr. Totah or Mr. Fribourg.

MR. BERNFELD: I'm going on to a different question, your Honor.

THE COURT: All right.

Q During 1963 did you have any contact with Harold Vogel of Continental Grain?

A No contact other than meeting him in the hallway or something.

Q Do you recall whether you ever had any contact with Mr. Vogel concerning activities of the Oil Department?

A No, I did not.

Q Mr. Stafford, in 1972 do you recall giving pre-trial testimony in this action?

A I do recall. I don't recall the year. There were a number of occasions.

Q In that year when you were examined, page 194, 195, you were asked whether you recalled that during the time you were with Continental whether Mr. Vogel participated in commodity trading, cottonseed or soybean oil or communicated with representatives of Continental or others with regard to trading in oil, soybean oil and cottonseed oil.

Do you recall that question?

A Vaguely.

Q And you responded, "Yes, I recall that Mr. Vogel discussed the activities of our division, for example, during the absence of Mr. Fribourg, as I recall, in a routine manner, since he was the responsible official at the time in Mr. Fribourg's absence."

Does that refresh your recollection?

A I recall having testified that way.

Q Did Mr. Vogel, in fact, routinely discuss the activities of the Oil Department as you have testified?

A No, he did not.

MR. SMITH: Objection.

A My testimony at the time was inadvertently inaccurate. I had based it on assumptions of the

hierarchy in Continental Grain, of which I personally really had no knowledge.

I was going strictly on assumptions and not on facts, the assumptions being that Mr. Vogel was executive vice-president and I just thought that things worked that way whereas, in fact, I subsequently found out that they certainly did not work that way.

I really had no facts on which to base the answer I did give inaccurately during that pre-trial testimony.

Q I call your attention to your testimony on the following page where you were asked, "Any communication with regard to that division" -- referring to the Oil Division --"in 1962 or 1961"?

And you responded, "I believe you just said that I said he communicated with Mr. Totah.

"I didn't say that at all. I said that my communications -- or perhaps I didn't say that, excuse me, Mr. Klapper. What I had meant to say was that Mr. Vogel in Mr. Fribourg's absence was informed at times of his question of certain activities of our division. There were times that I myself communicated with him during that seven-year period."

Do you recall that testimony, Mr. Stafford?

A I was trying to be scrupulously accurate in every detail at the time, and in attempting to do it I was covering a broad area such as a very brief, cursory meeting that might have occurred between Mr. Vogel and myself in the hallway or some insignificant, innocuous question, which routinely I would answer. I meant at no time to imply that Mr. Vogel associated himself in any way in the activities of our division.

Q So your testimony today is contrary then to the testimony you gave then?

A Yes.

MR. SMITH: Objection, your Honor. The testimony will speak for itself.

Q Mr. Stafford, was Continental vegetable oil futures activities in 1963 primarily hedge or speculative in nature?

A It was primarily a hedged operation.

Q To your knowledge, was there occasion when Continental speculated in futures?

A There were occasions.

Q During 1963 were you a member of the New York Produce Exchange?

A I was a member, but I don't recall the year.

MR. BERNFELD: I don't know whether that is a

transaction?

A There was no guarantee.

Q There was no built in profit of approximately $2 a metric ton?

A You used the word guarantee. We had no such agreement with Allied. We had no agreement. We had no guarantees from Allied. It was a negotiated purchase and sale, similar to many, many others that we made.

Q Did these purchases and sales take the same patter over a period of time?

A There was no pattern except in the sense that an ex-pit transaction is similar to the next ex-pit transaction.

Q Do you recall whether Continental also engaged in ex-pit transactions with Allied involving soybean oil registered warehouse receipts?

A Yes.

Q Was there any interest built into any of those transactions?

MR. O'DONNELL: Objection, your Honor.

THE COURT: Sustained.

MR. BERNFELD: I was only intending to pursue it, your Honot, to see if that refreshes his

futures?

A Well, again I can't be specific about them all except to say that it would have been derelict on the part of the duties of the trader to have omitted them or forgotten about it.

Q Do you recall the rate of interest involved?

A It was approximately 6 per cent, as I recall, per annum.

Q Do you now recall any discussion with respect to an additional 9 points per hundred rate or $2 per metric ton guaranteed profit in connection with these -- $2 per metric ton involved in these ex-pit transactions? Do you recall that?

A I recall this is part of the calculation.

Q Would you describe to us how that calculation worked?

A Well, it was just added in. The $2 a ton or approximately 9 points -- incidentally, I'm certainly not sure that it was a hard and fast rule on our part that it had to be 9 points in each instance. If it was, it would be a part of the calculation.

Q Do you recall that there was some number of points involved in addition to the interest in the

Q Do you recall having discussions about the markup involved in addition to the interest in these ex-pit transactions with anyone at Continental?

A I was, of course, not in charge of the division. The nature of things, the natural flow of trading, I don't again recall specifically having discussed this. The amount of markup on a transaction which I was -- which I played a part would frequently be discussed with my superiors.

Q That would include?

A It might well have included Mr. Totah.

Q Anyone else?

A Very doubtful.

Q During 1983, Mr. Stafford, was it unusual for Continental to engage in a single transaction involving futures contracts where 600 cottonseed oil futures contracts were traded at one time?

MR. SMITH: Objectionto the form, your Honor.

MR. O'DONNELL: Objection to the relevance.

THE COURT: The objection as to relevance is sustained.

Q In the ordinary course of your duties, Mr. Stafford, did you report to Mr. Totah transactions

involving cottonseed oil above a certain price?

A To the best of my recollection, I tried to spare Mr. Totah as much as possible the details of the transactions in which we were engaged. Mr. Totah was naturally aware at the end of each day of the way we stood as a firm in the market. He was certainly consulted about any major decision to be taken. He was not made familiar with every detail of every transaction.

Q Did you consider a decision ro purchase 600 registered warehouse receipts to be a major decision?

MR. O'DONNELL: Objection to relevance, you[illegible]or.

THE COURT: The objection is sustained.

Mr. Bernfeld, if the purpose of all this is to ascertain from Mr. Stafford whether he discussed with Mr. Totah the details of the transactions in a relationship with Allied, ask him that. That's what you are after.

Q Did you discuss the details of the ex-pit transactions with Allied with Mr. Totah during 1963?

A I can't answer accurately because I don't recall. I would be doubtful that I did in each case at least.

THE COURT: But in terms of the transaction, the price that you bought and the markup and the interest and all that, that was your responsibility?

THE WITNESS: Yes, your Honor.

THE COURT: All right.

I assume that is what you were trying to find out.

MR. BERNFELD: That is part of it, your Honor. I also wanted to explore the riskless nature of the transaction, because I believe that has to do with the motive of Continental in engaging in these transactions --

MR. SMITH: I object to that, your Honor.

THE COURT: I think that everyone who has been here to testify from all of these people as far as I can recall had indicated, and I think it's going to be conceded, that when they entered into these transactions with Allied and Mr. DeAngelis did the same, they did make an effort to make them risk proof.

Whether or not they are actually that or not is something else, but I don't see that you have to struggle to establish that.

Q Mr. Stafford, do you recall discussing this aspect, the risk free nature, with Mr. Gittleman

THE COURT: All right, Mr. Smith.

CROSS-EXAMINATION

BY MR. SMITH:

Q Mr. Stafford, let's first deal with this question of what you said in 1972 about Mr. Vogel. You testified on direct examination by Mr. Bernfeld that you said in 1972 that you thought that Mr. Vogel was sometimes in charge in Mr. Fribourg's absence and you were mistaken about that, is that right?

A Yes, I was mistaken.

Q Did you also testify as follows, on page 38:

"Were you in communication with Mr. Vogel during 1963 as to Continental's trading in cottonseed oil futures?

"A No, sir."

Did you give that testimony?

A Yes.

Q And you weren't mistaken about that, were you?

A No, sir, I was not.

Q On these exhibits, Mr. Stafford, you testified that you had certain conversations with Mr. Gittleman.

handling what we call cakes and feedstuffs. Feeding stuffs.

Q That is a product other than vegetable oil?

A Yes.

Q Just to make it absolutely clear, did you at any time during 1963 report to Harold Vogel in the course of your duties?

A No.

Q Did Vogel at any time during 1963 talk to you or tell you about what he was doing as a director of the Produce Exchange?

A No.

Q Did he ask you or so far as you know anyone in Continental's oil business for advice or instructions as to how he should act on the Produce Exchange?

A No.

Q During that last week of trading on the Produce Exchange, Mr. Stafford, the week of November 14th to November 20th did you have inside information that there was a tremendous concentrated position and that the Produce Exchange was meeting about it and that the market was going to collapse?

MR. BERNFELD: Objection.

THE COURT: Overruled.

between 15 to 20 per cent.

Q Approximately what percentage of the vegetable oil business involved Allied?

A 70 per cent.

Q During 1963 in addition to buying from and selling to Allied, did you also engage in financings with Allied?

A That is correct.

Q Did these include both pre-financing arrangements and financing in connection with registered warehouse receipts?

A It was the pre-financing on purchases we made from Allied for export.

Q Would you explain how that worked, please?

A We were buying from Allied for export against -- a commitment for export with advancing part of the value of our commitment.

Q Would you take any security?

A Take field warehouse receipts.

Q Were there any futures transactions connected with the pre-financing arrangements?

A Not as far as I know, no.

THE COURT: I didn't hear that, Mr. Totah.

THE WITNESS: Not as far as I know.

Q So the field warehouse receipts were not hedged in the futures market; is that correct?

A That is correct.

Q Did you have any kind of a hedge against those field warehouse receipts?

A There was no reason to have a hedge as far as I'm concerned since we were advancing him only 80 per cent of the value of the purchase. We have 20 per cent as a --

Q Equity?

A Not equity. 20 per cent were paid after the completion of the execution of the contract. We were advancing only 80 per cent of the total of the export.

Q At what point would you make this 80 per cent advance in terms of what point you were in your contract?

A We are not advancing the 80 per cent, we are advancing 80 per cent against field warehouse receipts. When the oil is shipped, we would pay him the difference of the 20 per cent.

Q When you entered into the contract with Allied to buy the oil, that was the time you would advance the 80 per cent?

A Correct.

Q Is that right?

A Correct.

gr1 Totah-direct [4157]

Q The oil in question is the actual oil that you intended to purchase and deliver to your ship or whomever?

A That is correct.

Q In connection with the transactions relating to registered warehouse receipts in 1963, do you recall when this commenced?

A I don't recall.

Q Approximately April of 1963?

A I don't recall.

Q Was it the spring?

A I don't recall.

Q Not at all?

A No.

Q Do you recall that you were doing them in 1963?

A That is correct.

Q Do you recall whether you did them before 1963?

A It's possible, but I don't recall.

Q You don't remember one way or the other?

A No, sir.

Q Do you have any recollectionof how you came to do these transactions whenever it might have been?

of the transaction?

A I don't believe they tell me, this is the transaction which is a secured or a hedged transaction on which we will have a certain amount of profit.

Q Did they tell you where there is any risk involved?

A There was no risk since it was a hedged transaction.

Q Did they tell you the amount of profit?

A Yes, sir.

Q What did they tell you about that?

A About 9 cents or $2 a pound.

Q Did they tell you anything else about the transaction?

A I don't believe so.

Q Once they approved the first one, did the traders come to you for approval on each successive transaction?

A I don't believe so, no.

Q Did you ever discuss these transactions with Mr. DeAngelis?

A I don't believe I have ever discussed it with Mr. DeAngelis.

Q Did you ever discuss them with Mr. Gittleman?

believe that they have discussed the position of Continental in the futures market.

Q I didn't say the position, the activity of Continental in the futures market, was that discussed?

A I don't believe they have discussed it, no.

THE COURT: Mr. Kirsch, what is the relevance of all this to this case?

He's indicated to you the transaction and the profitability and no risk and so forth.

What is there about this meeting --

MR. KIRSCH: I'm sorry, your Honor. The meeting also discussed another subject. Perhaps I went into that without clarifying it.

Q At that meeting did Mr. Gittleman complain about the selling activities of Continental Grain in the cottonseed oil futures market?

A He might have complained, but I don't think he has any reason to do it.

Q What is your best recollection, did he or didn't he complain?

A It's possible that he mentioned it in discussing it with Stafford, but not with me.

Q You were present at this discussion?

A I was present at the meeting.

Q Did you hear him complain?

A I didn't hear him complain, no.

Q Did you hear him say anything about Continental's selling activities in the cottonseed oil futures market?

A He might have said so, yes. I don't remember.

Q You don't deny that he said it, though?

A I would deny that he said it.

Q Did he complain in substance that Continental was working against Allied in the futures market?

THE COURT: Mr. Kirsch, it's been established, and up to now it has not been controverted -- I think Mr. Gittleman and Mr. DeAngelis indicated that at this meeting there had been a complaint.

Are you trying to have that controverted?

MR. KIRSCH: No, sir. I think I'm entitled to probe the witness' recollection of these events.

THE COURT: You have it established.

Isn't that what you want to establish?

MR. KIRSCH: I think I also have to establish his knowledge and understanding of the patterns because I think Mr. Gittleman testified that

Continental denied that it was doing what Mr. Gittleman complained of.

MR. LIMAN: Thatis not what Mr. Gittleman testified to at all. I think they ought to be more direct on what Mr. Gittleman said.

In any event, what Mr. Gittleman said to Mr. Totah is irrelevant. They have asked him what he recalls of the meeting. He said what he does recall. I submit, your Honor, he should move on to another subject.

THE COURT: I have the same impression.

I don't see that this probing is going to serve your purpose, I really don't.

MR. KIRSCH: I will move on, your Honor. I don't think any point will be served by reading Mr. Gittleman's transcript.

THE COURT: If you and Mr. Harris want to challenge what you have already established, then go ahead.

MR. HARRIS: Can we approach the bench? I don't want to have to make a speech in front of the jury about what our theory is.

THE COURT: I have allowed you to go ahead.

Proceed.

Q Whether or not you remember getting the report, you know that in 1963 during the course of the year you did have export contracts?

A That is correct.

Q At almost any point in time during that period?

A That is correct.

Q Would some of the cash commodity shown on these position sheets that you received be destined for shipment against the export contracts?

a I believe so.

Q During 1963 were there any meetings of department heads at Continental?

A Of Continental, my division?

Q Your division and other divisions.

A No, sir.

Q Never?

A If they were, my division was not part of it.

Q Were there any meetings to discuss the restructuring in March of 1963? Any general overall meetings in which it was explained to the various divisions of the company what the effects of this restructuring was, what the purposes were?

A I have no idea, sir.

Q You don't recall any such?

A I don't recall.

Q Do you recall ever being present at a meeting at which both the president and Mr. Vogel were present?

A No, sir.

Q You testified that no such meetings took place in 1963?

A I wasn't present --

MR. O'DONNELL: I object. I don't know how he could tell whether Mr. Vogel and the president met.

MR. LIMAN: He was asked I thought whether Mr. Totah, Mr. Vogel and Mr. Fribourg met together, isn't that what the question is?

MR. HIRSCH: That is correct.

THE COURT: He has answered that question.

A It never happened.

Q Did you ever get financial statements showing the overall position of Continental as opposed to just your division, during 1963?

A I don't believe so.

Q There is testimony that your division used Chicago brokers from Continental's Chicago office to execute soybean oil trdes on the Chicago Board of Trade.

Were there ever any problems with execution,

actions?

A I might have mentioned it to Mr. Fribourg, but not to anybody else.

Q Not even in general conversations?

A Not even in general conversations.

Q During the period from November 14th to the 20th, 1963 were you in touch with anyone from Allied?

A It is possible.

Q What is your best recollection?

A I have none.

Q Let me read to you from page 251 of your examination on July 10, 1972:

"Q Were you in touch with any representatives of Allied during the time period of November 14th to November 20, 1963, if you remember, with regard to your relationships with Allied?

"A I believe so."

Does that refresh your recollection that you did have such?

A That is possible. Again, I don't remember.

Q Do you acknowledge that that was your testimony in 1972?

A If it is there it is there.

elrf 9 Totah-direct 4183

THE COURT: Mr. Hirsch, this is really going a little bit too far. I have allowed this, but it really isn't getting anywhere.

MR. HIRSCH: I only have two or three more questions along this line, your Honor.

THE COURT: Ask them.

Q Do you recall that a 25 point limit was imposed on November 19th?

A I heard about it.

Q Did you have any discussions within your offices about that?

A It's possible.

Q Did those discussions go outside your division to anyone at Continental?

A No one outside the division.

Q Did the discussions within your office concern whether there was an orderly market in cottonseed oil futures at that time?

A I don't remember.

Q Whether it was unusual?

A It could be but I don't remember.

Q Do you recall that you were out of the country during June and July of 1963?

A I believe so.

Q For approximately a month, six weeks, something like that, approximately?

A Usually it is about two months.

Q Okay. To whom did your traders report during this period?

A To myself.

Q Anybody else?

A Whenever the opportunity occurred they would call me if there is something to report.

MR. HIRSCH: I have no further questions.

CROSS EXAMINATION

BY MR. LIMAN:

Q Mr. Totah, I think at the beginning you got the question of North American Continental and Continental Grain inverted.

Am I correct you were an executive vice-president of North American Continental, a division of Arrow Continental Corporation?

A That is correct.

Q And then in March of 1963 when that company was merged into Continental Grain you became a vice-president of the General Merchandise Division?

A That is correct.

Q And the General Merchandise Division was the same entity that you had run as a separate company before?

A That is correct.

Q Both before and after you reported directly to Mr. Fribourg?

A Correct.

Q In fact, you would report to him in your native language of French?

A You are correct.

Q At any time did you ever report to Mr. Vogel?

A Definitely not.

Q Did he have any authority over your division?

A Definitely not. Neither Mr. Vogel or any other executive of Continental Grain.

Q Even before you joined Continental Grain, your principal background was in rice trading; am I correct?

A That is correct.

Q And rice was the principal commodity of your division; am I correct?

A That is correct.

Q And rice is not a futures commodity in this country?

A It is not a futures; a cash commodity.

Q Am I correct that you never have been engaged at any time in your career in futures trading?

A You are correct, sir.

Q And you are not conversant with the mechanics of futures trading?

A I know nothing about it.

Q What has to be done in the pit or outside the pit?

A No, sir.

Q That is a matter that you left to your traders

elr "Worthington 4204

"Q Did you speak with Merrill Lynch on a daily basis?

"A Yes.

"Q Both as to its Chicago and New York information in soybean and cottonseed oil futures?

"A Yes."

Page 79, line 17:

"Q Did you hear any discussion or did you participate in any discussion that Allied's activities with regard to cottonseed and/or soybean oil was largely unprofitable during 1963 and that he was in need of financing to finance his activities?

"A There was gossip in the trade about that possibility, yes.

"Q Can you tell me to the best of your recollection what that gossip was?

"A I cannot recall specifically.

"Q Do you recall approximately what time during 1963 it took place?

"A No.

"Q Do you recall whether it was gossip which was advanced on more than one occasion?

"A I do not recall but I am sure it must have been.

elr "Worthington 4205

"Q On more than one occasion?

"A Because his activities, as I pointed out, were quite substantial, so people are inclined to discuss things about which they want to clarify their thinking."

That is the end of this selection, your Honor. We go next to the deposition testimony of Michel Fribourg on November 30, 1972, an examination taken by plaintiff trustee. Page 3, line 19:

"Q Mr. Fribourg, what is your current position with Continental Grain Company?

"A I am president of the company.

"Q Are you the senior official?

"A Yes.

"Q There is no one on a coordinate level of responsibility?

"A None.

"Q Were you president of Continental Grain Company in 1963?

"A Yes."

Page 11, line 23:

"Q Did you know in 1963, Mr. Fribourg, that Mr. Vogel" --

MR. SMITH: I'm sorry, I would like to read something in between.

elr "Fribourg 4206

Page 5, line 7:

"Q To whom in the performance of his duties did Mr. Totah report?

"A To myself.

"Q When you were away to whom did Mr. Totah report?

"A To no one. To me. Even when I was away."

Going down to line 20.

"Q At any time during 1963 to your present recollection, did Mr. Totah communicate with Mr. Vogel with regard to the activities ofthe General Merchandise Division?

"A No. I want to make it very clear, Mr. Totah was not responsible in any way to Mr. Vogel."

MR. BERNFELD: Page 11, line 23.

"Q Did you know in 1963, Mr. Fribourg, that Mr. Vogel was a member of the board of management of the New York Produce Exchange?

"A Yes.

"Q You know that he was a manager of the executive committee of the New York Produce Exchange?

"A I can't recollect, but, surely, I must have known.

"Q And you surely must have known that he was

elr "Fribourg

vice president of the exchange?

"A I surely must have known.

"Q Did there come a time, to your present recollection, when Mr. Vogel asked you for your permission or the permission of Continental Grain Company to serve on the board of management or the executive committee of the exchange?

"A I would say that I am convinced without recollecting, I am convinced that he did, because it was company policy that no officer of the company could sit on the board of any public organization without referring it to myself.

"Q Can you tell me what factors, if any, are taken into consideration as a matterof company policy in authorizing or refusing authorization to sit on boards for Continental employees?

"A We feel that some of the top executives in our company have certain public duties toward the outside; and, therefore, we consider that some of our officers can contribute to the good of our industry by being on certain, being part of certain public functions."

MR. SMITH: Your Honor, at this point I'd like to object to the remainder of this selection.

If he wants to read down to line 22 -- do you have a copy, sir -- he wants to read down to line 22, I think it is irrelevant. If he does I'd like to go down to page 16, line 13, which is necessary to put it in context.

MR. BERNFELD: I certainly do want to go down to line 22. I have no objection to his reading the rest of it.

MR. SMITH: I think the whole thing is irrelevant, your Honor. It's about Mr. Fribourg's state of mind, and it has nothing to do with the issues. He is not a defendant.

MR. BERNFELD: It has to do with his --

THE COURT: Let me read it.

(Pause)

THE COURT: I will allow it to be read. You may read whatever you want on page 16.

BY MR. BERNFELD:

"Q Then am I correct when you authorized or Continental Grain authorized Mr. Vogel's participation, it was with the knowledge that the board of managers or executive committee was concerned with activities of your industry, in which Continental was involved?

"A Well, if you are to put it that way, yes. I can tell you that my opinion of it, maybe of the produce

elr "Fribourg [4209]

exchange, was a minor contribution. We did not consider the produce exchange as a very active organization, and the only reason why possibly Mr. Vogel was on this board was that our headquarters are in New York, we had a certain reason to be; but I considered this a a manir, or what would you say, a minor duty of Mr. Voge..

"Q At the time you authorized Mr. Vogel to assume this monor duty, did you have an opinion as to whether the board of managers or the executive committee or any other organization of the exchange had power to regulate trading in cottonseed oil futures trading?

"A I had no idea whatsoever."

MR. SMITH: I will continue.

"Q At any time when Mr. Vogel sat in the capacities we have just discussed, did he ever communicate with you with regard to discussions with regard to regulation of futures trading?"

I am continuing from where Mr. Bernfeld left off, page 13, line 23.

"A None whatsoever.

"I want to make clear that some of our other managers in the Midwest were also directors of some of the exchanges, and that was done on a completely free

elr "Fribourg [4210]

basis, and they had absolutely no obligation whatsoever to report to me anything that was going on on those exchanges.

"Q As a general proposition, Mr. Fribourg, when Continental Grain makes its policy decisions to allow or not allow one of its employees to sit on a board, is a factor of consideration as to whether Continental has an interest in the trading matters of that board?

"A No, as I told you, it is a public service. We consider this as a public service.

"Q When you approved Mr. Vogel's serving in any of these capacities, you did not regard it to be posing a conflict, present or potential, with regard to Contnental's position in cottonseed oil futures?

"A I never entered my mind.

"Q Did Mr. Vogel ever communicate to you that activities under discussion at the produce exchange or its subdivision dealing with trading, that cottonseed oil futures might be confidential and, therefore, he would not report back to Continental, even though Continental might be trading in that product?

"A I think I said no executive of Continental had any duty to report what was going on in the exchanges;

elr "Fribourg [4211]

and I never considered they had any importance; and there was absolutely no communication on questions that affected the New York Produce Exchange."

Going down to line 16.

"Q Did you have an opinion at the time when Mr. Vogel began to serve on the board of management that that activities of the exchange were not sufficiently important so as to affect in any significant way Continental's activities in cottonseed oil trading?

"A I didn't even consider it."

MR. BERNFELD: Your Honor, I'd like to back up and read those few lines.

MR. SMITH: The only testimony there is:

"A Could you rephrase what you said?"

Do you want to read the question?

MR. BERNFELD: Yes, I'd like that question as part of the response for the answer.

"Q I want to see if I understand you. Are you testifying that you did not regard the exchange's functioning as important enough to warrant Mr. Vogel's reporting to you as far as Continental was concerned?"

And the question was rephrased.

"A Could you rephrase what you said?"

MR. BERNFELD: Then there was the question

elr "Fribourg

that was read.

MR. SMITH: I just want to make it absolutely clear that these were the questions posed by the lawyers for the plaintiff in this deposition; and the attorney for the plaintiff goes on to say:

"Q I am not sure I understand what you meant when you said you regarded the duties of the exchange as sufficiently minor.

"Perhaps counsel can clarify it."

MR. HIRSCH: Do I now get to be Mr. Liman?

MR. SMITH: No, I will be Mr. Liman.

Mr. Liman said:

"Mr. Fribourg said no matter what exchange an employee sits on he does not have a duty to report" --

MR. BERNFELD: I object to counsel giving an explanation.

MR. SMITH: It was invited by plaintiff's counsel.

MR. BERNFELD: Your Honor, the purpose of pretrial discovery is to elicit information in connection with preparation for trial. To the extent there is discussion by counsel, I don't feel it's relevant.

MR. SMITH: The witness adopted it.

elr "Fribourg [4213]

THE COURT: What's been interjected in here is your insisting on the reading of a question which is really, as the record shows, misstated what Mr. Fribourg said.

MR. BERNFELD: There were two questions in a row followed by an answer.

THE COURT: That question was restated and the answer was given.

MR. BERNFELD: That's right, and I thought that was the completion of it. This follows that. This was not in the middle of that. That was after that answer was given.

THE COURT: Let's move on. I think it's clear.

MR. SMITH: May I read it?

THE COURT: Yes.

MR. SMITH: This is Mr. Liman.

"Mr. Fribourg said no matter what exchange an employee sits on he does not have a duty to report; and, second, he said this exchange was minor in relationship to the industry in Continental Grain's functions; and that, therefore, it was not a very active exchange or concern with a part of the business that was important to Continental.

elr "Fribourg

"Did I fairly explain, Mr. Fribourg?

"The Witness: Yes.

"Q Then you were not worried as to what the exchange could do to affect Continental's activities?

"A No, absolutely not."

THE COURT: Page 19 --

MR. SMITH: I have a short passage before that, your Honor.

THE COURT: I thought we would be finished with this in a few minutes. If we are going to take time we will take our morning recess now.

(The jury left the courtroom)

(Recess)

(In open court; jury present)

THE COURT: Mr. Smith, you are on page 19.

"Q Putting aside the percentage of Continental's trading, the trading in cottonseed oil futures was significant to Continental's business activities, was it not?

"A I don't know what you mean by significant. If you talk significant as far as significant in our overall business, I would say it was relatively minor compared to our overall grain operation; so it was, as far as we were concerned, with Continental's overall

elrf 3 "Fribourg" 4218

"Q Was he familiar in an academic sense or in a general sense with trading in cottonseed oil futures? Did he have an understanding of the product and its operation?

"A If you meant that if he had an active participation, I will tell you he definitely did not. I don't know what else you want to know. Theoretically, he understands the working of any futures market.

"Q You have answered the question.

"Do you recall in 1963 communicating with Mr. Sabin?"

MR. SMITH: Objection, your Honor, to the relevance of the following testimony. I should say relevance and hearsay.

THE COURT: I am going to sustain that. There is no point in introducing somebody into these proceedings that we have never heard of before, after five weeks. We ought to at this point know all the dramatists personae.

MR. BERNFELD: Page 46, line 8:

"Q Do you recall whether Continental paid the membership dues of Mr. Vogel as a member of the Exchange?

"A I think we, Continental, pays all membershi

elrf 13 "Kenner" [4228]

observe.

"A My point was that the information flow was inadequate to be involved in such large-scale financing and we had definitely to have more and better information if we were to keep with it.

" I had made a recommendation before that we receive an up-to-date position, cash futures, contracts, and such. As far as I know, it was never carried out, in whole at least.

"Q And this is the type of information that you wanted to obtain; is that right?

"A That's correct."

Next page, 324, line 19:

"Q I believe you stated off the record that you have a recollection of some discussions over the telephone with Mr. DeAngelis, which took place on November 15th;" the reference being to 1963,"is that right? That is the Friday.

"A I did have a discussion with him that afternoon.

"Q Will you state what that discussion was, what you said and what he said?

"A I don't recall whether I called him about the margin deficiency and when and how he was going to

put it up, and/or whether he called me and requested a loan. He said to me -- and again I am not at all clear whether this was Friday or Monday -- that Bell Financing had attached his bank accounts and, therefore, he could not put up the money, the cash, and, in order to lift that and in order to pay the margin deficiency, he needed another loan.

He said he had many million pounds of free oil and he requested a loan from Bunge for those two purposes, and I remember telling him that Mr. Klein and only he could authorize such loans, but that we might consider some form whereby we would secure the margin deficiency by way of a mortgage.

"I recall also telling him that, based on the market reaction of that day, that it certainly did not appear that he would be able to come up with the margin call on Monday if he could not that day.

"Now, my view is based on what Mr. Brasmer had said that day or the day before -- I don't recall -- that it was his view that the Russians were not going to buy and that the speculative surge that had taken place during the past months, based in part on the purchases not only of oils but of grains and oil seeds, would not materialize and, therefore, there would be a very

elr12 4246

Fenner & Smith, Ralph N. Peters, Ralph N. Peters & Co., and I. Usiskin & Co.

That completes the selections of reading from the stipulated facts, your Honor.

Next there are certain documents which we would propose to offer at this time. We first offer Plaintiff's Exhibits 10C and 10G for identification.

MR. LIMAN: Could he list what he is offering so we can get it out of the file all at once?

THE COURT: Yes. Read them all.

MR. BERNFELD: Next certain portions of 55, which are the bylaws.

Next I would like to reoffer, your Honor, certain charts which we had Professor Dahl identify and at the time you indicated that you believed it was inappropriate at the time and for lack of various reasons, and I thought it might be appropriate to offer them now.

MR. LIMAN: You mean those transparencies?

MR. BERNFELD: Yes.

5b am elrf 1

THE COURT: For what purpose?

MR. BERNFELD: For the purpose that certain of the information contained in those transparencies will illuminate the understanding of the jury on certain transactions.

THE COURT: But I have ruled that you can't offer them.

MR. BERNFELD: I would like to offer Xerox copies of the graph.

THE COURT: I have ruled you can't offer the originals. So obviously you can't offer copies.

MR. BERNFELD: I thought the objection went to the fact that it was a transparency and had to be used with an overhead projector.

THE COURT: No, my reason for not allowing them in was I didn't feel on the basis of the evidence that they added anything, as a matter of fact, that they distorted in the way they appeared, they distorted the evidence and would tend to confuse rather than clarify the issues.

So I barred them. I barred them on the basis that maybe I left it open that at some point you may have introduced some evidence that would make me change my mind. But obviously that point hasn't arrived yet.

elrf 2

MR. BERNFELD: In particular, your Honor, I was going to offer the chart which is Plaintiff's Exhibit 131 for identification, which gives the positions of clearing members. I was going to offer that based not only on the testimony of Professor Dahl, but also on the testimony of the defendant Sidney Fashena. And the relevant chart that related to it I wanted to offer specifically.

I thought if you saw it you would see this context that it is relevant.

THE COURT: Let's get a list of all of them. 55 and what is this other one, 131.

MR. BERNFELD: Excuse me. 55, 131, 131-A and 133-A, which were the two transparencies. And then 240.

Those are against all the defendants. In addition, we have certain ones against selected defendants. Shall we deal with the ones against all the defendants first?

THE COURT: No, we might as well get them all out. And the defendants can have them before them and can be dealing with them. Probably will be better.

MR. BERNFELD: Against Defendants Bunge and Klein, 197. Against the Defendants Merrill Lynch and

elr

4264

MR. BERNFELD: Mr. Harris and Mr. Minnerop have entered into the following stipulation which I'd like to read:

In 1963 Continental and Bunge among many others traded various commodities, including but not limited to cottonseed oil and soybean oil through Merrill Lynch, Pierce, Fenner and Smith, and that during the year Bunge and Continental, among many others, were good and valued customers of Merrill Lynch. We have --

MR. MINNEROP: Your Honor, I was asked to stipulate to this. It's a pleasure to do that.

THE COURT: Continental and who else?

MR. BERNFELD: Bunge.

THE COURT: Were good and valued customers?

MR. MINNEROP: Among many others.

THE COURT: This is beginning to sound more and more like a TV drama.

MR. BERNFELD: Your Honor, we turn now to Plaintiff's Exhibit 55 in evidence, the bylaws. I would wish to read to the jury the first two paragraphs of section 61 relating to the committee on business conduct.

MR. O'DONNELL: Your Honor, I object to this. I don't think that the bylaws should be

members.

Q So that the totals on the bottom are the actual totals of all contracts cleared through the clearing association?

A That is correct.

MR. HARRIS: At this time, your Honor, we'd like to reoffer 130 and 131 for identification.

MR. O'DONNELL: May I have some voir dire, your Honor.

VOIR DIRE EXAMINATION

BY MR. O'DONNELL:

Q Mr. Ellison, with respect to Exhibit 130 for identification that exhibit is listed aggregate number of cottonseed oil futures contracts bought and sold by selected brokers monthly, January 1963 to November 19, 1963. Then for each month you have with respect to each broker that you list, numb er of contracts and a percentage figure which comes out to 100 per cent each month.

Do you see that?

A Yes, I do.

Q As I understand it from the note at the bottom of this exhibit your source for this information is records of the New York Produce Exchange Clearing

Association, consisting of recap or settlement sheets for individual members, and monthly handwritten summaries of bought and sold transactions utilized for billing purposes.

A Yes.

Q Is that for some 10 or 15 years ago?

A That is correct.

Q At the Clearing Association?

A Yes.

Q And that was confidential information of the Clearing Association at the time, was it not?

A I believe it was.

Q And you saw it in your capacity as an accountant for the Trustee of the bankrupt estate of Haupt pursuant to subpoena served on the Clearing Association, is that not right?

A I believe so.

Q It was not accessible to the public?

A I don't believe so.

Q And it was not available, this information during this period January-November 1963 to members of the New York Produce Exchange, was it?

A I wouldn't know about that.

Q Well, you know that it was not, don't you?

A I understand that it was not.

Q You know that this is not any record of the New York Produce Exchange, is that not right?

A It is a record of the Clearing Association.

Q Are the records of the Clearing Association

A That particular schedule is not a position schedule, it is a volume schedule.

Q But it is not a net volume schedule of longs and shorts, is it?

A It is not a net volume schedule of boughts and sold.

Q If there were a 1001 opposite a brokers name and 500 were long and 501 were short, the net position would be 1 for that month, is that correct?

A I think that --

Q Will you answer the question?

MR. HARRIS: Mr. O'Donnell is questioning about the wrong exhibit. This is an exhibit which deals with the trading volume, and it doesn't deal with open interest, and now he is asking about open interest, which is the other exhibit in front of him, and he is asking a question that is not capable of response.

MR. O'DONNELL: I think he is easily capable of response.

MR. HARRIS: The information he is asking now is set forth on the other chart.

THE COURT: Am I to understand that this chart 130 is the position of the various people listed

and it is information that was confidential to the Produce Exchange?

MR. HARRIS: No, Exhibit 130 is the amount of contracts bought and sold in that month.

THE COURT: Is the information that is confidential for the Clearing Association at the time in question?

MR. O'DONNELL: Very much so, your Honor.

MR. HARRIS: Yes, your Honor. It is not confidential with regard to the Produce Exchange when it seeks to investigate trading activity. It is confidential when you and I were to talk in and say let me see your records, and they would say no.

MR. O'DONNELL: That is a record created by Mr. Ellison based on individual daily reports to the Clearing Association, never going to the New York Produce Exchange.

THE COURT: No one has that information unless the New York Produce Exchange or some investigatory agency would seek to get that information.

MR. O'DONNELL: That is correct, your Honor.

THE COURT: I'm not going to allow the exhibit to come in.

MR. O'DONNELL: Your Honor, that is equally

true with respect to the information on Exhibit 131, which is equally authored, and I'm not going to ask a question about it, but the information is Clearing Association information, confidential to the Clearing Association, available only to it and the particular member of the Clearing Association, created by this witness by subpoena power after the fact.

MR. HARRIS: I think we are entitled to prove what the Produce Exchange would have found out if they had asked questions, and all they had to do was ask. Mr. Fashena said --

THE COURT: You may contend that there is information which the New York Produce Exchange could have found out, but the problem is, Mr. Harris, that you have to, it seems to me, establish the basis on which they would be required at some point to go to get this. What you are doing now is trying to bring out information which you have established which may or may not have been available, on that basis you say should have cornered.

In any event, if the information is true as to 130 and 131, the objection to their admissibility is sustained.

MR. HARRIS: There is no doubt that this is

the information from the Clearing Association. I don't doubt that, your Honor.

THE COURT: That isn't my point --

MR. HARRIS: I know, unless you want to hear argument.

THE COURT: The only thing I asked is whether it was confidential. If it was information which wasn't available to these people at the time, and you saw would have been available had they asked for it. The second thing is that they should have asked for it.

MR. HARRIS: We have had evidence in this trial with respect to what they should have done.

THE COURT: The point is, Mr. Harris, and don't argue about this any more, please, as far as I am concerned, at this juncture of the trial and this stage of your proof, the objection is sustained as to 130 and 131. I gave you a suggestion last night as to what you would be required to do before you got any of this information in. You choose not to follow that, that is up to you.

MR. HARRIS: Your Honor, may I approach the bench because maybe I misunderstood,your Honor, because I thought you were referring to two specific items that will come up later this afternoon.

(Witness excused)

MR. HARRIS: Our next witness, your Honor, is professor Gray. I just want a moment to put his papers in order so they don't get lost.

(Pause)

R O G E R G R A Y, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q Professor Gray, what is your present occupation?

A I'm professor and economist at Stanford University.

Q Are you attached to any particular part of Stanford University, sir?

A Yes, I'm in a department called the food research institute.

Q Can you just tell us in a general way what the food research institute is?

A The food research institute is a department of applied economics that had its origin in studying mostly food problems, but now generally studies

firms of the commodity exchanges, including the commercial firms, in particular considerable consulting for Cargill, Inc., a member firm of various exahanges and a commercial trading firm.

To a lesser extent some consultation for General Mills, Continental Grain, and then in another category of member firms, I have consulted to a number of the commission firms that deal in commodity futures.

I have also consulted to trade association in grain and in cotton and in sugar beets, and perhaps others.

Q That is enough, I think, Professor Gray.

You indicated you have consulted with the new commodities futures trading commission. Would you explain briefly what your consulting role was with that commission?

A This was almost, I guess one might say, an open ended consulting assignment across the board on matters pertaining to the regulation of futures facing and interpretations of the new law regarding futures trading.

The way that came about, I might explain, is that this is a new commission, established by law in 1974 and this commission first went into business in

and Commodity Exchange Commission, and I had been familiar also with the legislative history that gave rise to the institutionalization of this oversight provision and with the law that was first written in 1963, with numerous subsequent revisions, the most important substantive revisions or amendments having been made in 1938 and 1967 or '68.

Of course, I am jumping beyond 1963 now when I am going to 1968. Backing off to your question, which I believe you said 1963, I was at that time familiar with the Commodity Exchange Act, provisions in that Act that went to the point of the self-regulation of the exchanges were to implement and conduct this self-regulation.

Q In your answer you just referred to the law which was passed in 1936 and amended several times. That is the Commodity Exchange Act?

A Yes.

Q Were you familiar with the function and operation of the clearing house?

A Yes, I was.

Q Did commodity exchanges in 1963 have any duties in connection with the prevention of price manipulations?

Q Professor Gray, at the close of the session yesterday afternoon you had testified about there being a duty to prevent manipulations and prevent disorderly markets and to provide for the maintenance of integrity of contracts.

What I would like to ask you to do, sir, is to define what you mean by a manipulation, a disorderly market and the maintenance of integrity of contracts?

A By a manipulation I mean the taking or holding or price to an artificial level by some deliberate action which may be either in the trading itself or an action intended to affect the trading of others.

I might elaborate just one point further, holding prices to an artificial level, and I would mean a level that is not a reflection of real supply and real demand.

By a disorderly market, I would take that to mean a market in which trading does not proceed in such a manner as to reflect the stready flow and reflection of supply and demand from either side or maybe disrupted by the control that one or more traders may have over supplies in a given market.

The third phrase there was integrity of

contracts. I should think that integrity of contract could entrail both consideration of the financial integrity of the holders of the contract and that with particular reference ultimately to the financial integrity of the clearing house which has to stand behind these contracts. If the holders of a large quantity of contracts lack financial integrity, lack the capacity really to pay off on these contracts that, in turn, would be reflected in the responsibility of the clearing house to meet the obligations entailed in these contracts.

It could, in fact, ultimately jeopardize the underlying integrity of the contract if the clearing house were unable to pay off.

Another interpretation it seems to me of integrity of contract apart from the financial bona fides of the owners of the contracts would be the manner in which the contracts have been acquired or the purpose for which the contracts are held.

Contracts which are held for a manipulative purpose it seems to me lack integrity. Contracts acquired in an illegal manner would lack integrity.

Q Professor Gray, can you elaborate by giving an example on what a manipulation of the market is?

A Well, to give one example of a manipulation, we might consider a situation -- this is hypothetical -- we might consider a situation in which there is a government subsidy on export of commodity, and let this commodity be wheat, and to that extent it is non-hypothetical because we did have such government subsidies. And the level of the government subsidy for our export of wheat to other countries was announced on the basis of relationship between world prices and domestic prices.

The reading on domestic prices would have been taken by observing the closing price, let's say in this instance of the futures contracts for wheat at Kansas City.

If a firm has a large export sale, let that be ten million bushels of wheat, on which the subsidy has not yet been determined, that is this differential that it's going to be paid by the government between the world price and the domestic price, and then if that firm were to buy wheat futures contracts at the close of trading in Kansas City in sufficient quantity to cause the price to rise by a penny or two pennies

or three pennies, and if that quantity might be, for instance, 100,000 or 200,000 bushels, then the firm could obtain a good deal of leverage on the subsidy.

If it's got a ten million bushel subsidy sale, it's going to be affected by this trading at the close in Kansas City wheat futures, almost irrespective of whether the firm makes or loses money, whether the firm in any longer term way affects the price of wheat in Kansas City. If it affects it temprarily sufficiently then to obtain a higher rate of subsidy on the much larger quantity, one can see the purpose of this manipulation was to influence the subsidy that it would receive.

That 50 or 100 or 200 or half a million bushels of wheat that they might buy at the close of Kansas City is not a reflection of their real demand or need for wheat in the hypothetical example that I'm giving.

It's purpose and intent and presumed effect is to cause that price to rise so that the subsidy that the firm receives on its export sale would widen.

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THE COURT: Suppose the same thing happened inadvertently without your introductionof the intent? What would be your response?

THE WITNESS: In my view, your Honor, intent is a necessary component of a manipulation.

THE COURT: That is what I wanted to find out.

Q Professor Gray, in that example you just gave us, that was an example where the manipulator intended to cause a price increase by his activity in the futures market.

Can a manipulator also intend, and thereby, if he follows through with this intent, manipulate the market by causing a price decrease?

MR. O'DONNELL: Your Honor, I object to this. I think manipulation is a concept hard enough to understand in the concrete, let alone the abstract. I don't see the point of hypothetical examples of what somebody could dream up might be a manipulation in some hypothetical situation.

THE COURT: I don't think that objection is well taken, Mr. O'Donnell. I think Mr. Harris is entitled to illuminate the subject. I don't see where that question adds anything to it, because it

seems to me the answer is obvious. I think the answer is obvious to that question. I don't see where you have added anything, but let Professor Gray answer it. It seems to me there is an obvious answer to that.

If you have the intent to raise it to keep prices artificial, and the intent is to lower tt the same way, I think it's done the same way, is that correct?

THE WITNESS: That is exactly correct, your Honor. If you take or hold a price to an artificial level, to a prior level or lower level or hold it to a level that it wouldn't otherwise remain at, in any instance I would call this manipulation.

THE COURT: Provided the intent was present to do that.

THE WITNESS: Yes, your Honor.

Q Professor Gray, based upon your review of the cottonseed oil futures market in 1963 and the records and our studies that you told us about yesterday that you had made in connection with the vegetable oil futures market as it existed in 1963 and the events that occurred in the cottonseed oil futures market in 1963, do you have an opinion as to whether or not there was an actual or potential manipulation in cottonseed oil futures during the

year 1963?

A Yes, I have such an opinion.

Q What is that opinion, sir?

A It's my judgment that the price of cottonseed oil cash and futures was manipulated in 1963.

Q Can you tellus on what you base that opinion?

A Well, I base that opinion on the fact that through the financing arrangement that Allied Crude had with Bunge and Continental and Ralph Peters, substantial quantities of warehouse receipts, which of course represent cash cottonseed oil, were held off the market for extended periods of time.

The closest analogy, perhaps, that we might all of us be familiar with as to the effect that that would have and did have on prices, is found in the official governmental price support programs that we had in several commodities, grains and cotton, for a long period of years --

THE COURT: Excuse me, Professor Gray. I think that you, in order for us to be sure that Professor Gray is talking about the facts in this case, I think you better follow the traditional pattern of posing to him hypotheticals based upon facts in this case, so that when he answers, the defendants are going to know

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and the jury, that he is dealing with the facts that are before us. It hink that is the bset way to do that.

MR. HARRIS: Okay, your Honor. I was seeking to avoid going through a lot of the Bunge records and materials which Professor Gray has been thr ugh.

THE COURT: I have no idea, of course --

MR. HARRIS: I was going to get to that in the next series of questions.

THE COURT: Yes, but you are having him answer a question, and Professor Gray is delaing with various facets of the matters before us. He is saying about the Bunge financing -- I'm not sure what he is talking about. Is he talking about the same things that we know about or is he talking about something else?

It appears therefore to me to be vital that you pose to him the hypothetical so that you have before us precisely what has to be dealt with here. Then he can expand on his answer.

MR. HARRIS: Perhaps I can do it another way, your Honor, rather than asking long hypotheticals. Professor Gray is familiar with the data that has been introduced in this case. I can show him the data and have him describe what he understnds it to show.

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THE COURT: I don't suppose I really care too much about how it's done. The only thing I want to be sure of, that when Professor Gray talks about the Bunge financing, that he is talking about the same thing that I think he is talking about, and that has been presented to us here. Maybe not something I don't know about that he does.

Q Professor Gray, I'd like to show you a series of folders marked as Plaintiff's Exhibits 253A, B, C for identification, and 255A, B, C in evidence, which relate to Continental Grain Company, and which we have had testimony or records of Continental Grain --

THE COURT: He can't talk about anything that is for identification.

MR. LIMAN: 253 is soybean oil, your Honor. I'd like to know, may I have a voir dire on that?

THE COURT: He can't talk about things that are for identification. He has to talk about things that are in evidence.

MR. HARRIS: I think there is a stipulation that Mr. Ferretti testified and Mr. Liman will certainly stipulate that those are records of Continental Grain. There is no question about that.

MR. LIMAN: If he is going to eypressly give

an opinion on what he calls our financing arrangements, I think I am entitled before he expresses that opinion, to a voir dire as to what his preparations are and what the basis of his knowledge is of Continental.

We weren't involved in the other cases that the professor studied, that is point one.

Point two, Exhibit 253, as I understand it, is soybean oil.

Now, if Mr. Gray intends to testify about the market in soybean oil, I think we should have a ruling on whether that is a pertinent subject here, because I had always understood that this case involved the regulation of cottonseed oil futures, not a charge that the Chicago Board of Trade was lax.

THE COURT: The only relevance that soybean oil has is at best the period between November 14 and November 20, when the market closed. He can talk about soybean oil in regard to the operation of the market up until the 14th of November.

MR. HARRIS: Your Honor, there has been testimony in this trial that the same kinds of transactions took place in both markets, and I was going to have him elaborate because some of the information may be clearer in one transaction rather than another . We

are not going into the effect on the soybean oil market, but it's simply the same kind of transaction was done in both markets.

THE COURT: Professor Gray's views as to disorderliness in the market, and the next issue is the question of the duty of the market analysts or the people that ran it, and they dealt with the New York Produce Exchange, and they cannot be charged, I don't believe, with whatching what's happening in Chicago.

MR. HARRIS: I think the testimony will elucidate, we can start with the cottonseed oil, I have no problem with that.

THE COURT: I don't want to make things difficult. I was attempting to set the rules so that we all would know what we are talking about and be clear.

MR. LIMAN: I wouldlike to know what his premises are, because there is no way I can cross-examine unless he gets them. Ithink that is what your Honor is suggesting.

THE COURT: He was giving us his premises. I merely wanted to be sure that those premises were matters that are before us.

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MR. LIMAN: This, I take it, is his testimony as to his understanding of them, is that right, your Honor?

MR. HARRIS: Yes.

MR. LIMAN: May we inquire as to whether his understanding is based on something other than looking at the documents and these charts? I think we are entitled to have a foundation before an expert says what his understanding is of a transaction where there has been original testimony by participants.

MR. HARRIS: I elicited the witness' opinion that there was a manipulation of the market, and I think he is entitled to explain his understanding and what he bases that opinion on. That is what I am doing. I am attempting to go about it by tying it into the specifics of this case, as your Honor suggested. But I don't think they are entitled to disrupt this thing before the export explains what his opinion is based on. I think that is what they can bring out later, if they think his opinion isn't valid or it is not based on the proper understanding.

THE COURT: I think you are right.

A I believe the question had to do with the types of ex-pit transactions that were involved in exchange

or warehouse receipts, and going back to my earlier statement that there was a financing arrangement whereby warehouse receipts were held off the market, and the ex-pit transactions that are referred to here are the so-called 6-B ex-pit transactions reported to the New York Produce Exchange, in the case of cottonseed oil futures; and when the warehouse receipts were purchased by one of these firms that was financing Allied Crude, they simultaneously ex-pitted futures contracts in exactly the same quantity as represented by the warehouse receipts, which had then the effect of leaving Bunge or Continental holding the warehouse receipts and equivalent short position in the future market, and had the effect of leaving Allied Crude holding a long position in the futures market.

These then, these ex-pit transactions were reported at the Exchange and were announced, publicized at the Exchange floor, and were accompanied by or followed by letters verifying that these were type 6-B ex-pit transactions against the exchange of warehouse receipts.

Q Where did these warehouse receipts come from that were involved in these transactions, do you know?

A Well, the warehouse receipts came into Allied Crude's possession typically as an outgrowth --

him all of the exhibits that have them. I don't understand why -- ask him the questions -- that you don't frame them so that we know that they encompass all of the various facets of the evidence on which is before us.

Professor Gray may be testifying about a great deal of things in his answer, and these defendants aren't going to know whether he is talking about the things that come before the jury or not. I don't understand. I really don't understand what the problem is, why that can't be done.

MR. HARRIS: I can do it that way, your Honor.

THE COURT: Why don't you do it that way?

MR. HARRIS: I don't understand what is wrong with having him saying how he based his opinion.

THE COURT: Because of the fact in his doing that it isn't clarifying to the defendants or to the jury that he is basing it upon the evidence in this case.

You are supposed to put before him the evidentiary facts in this case --

MR. HARRIS: There they are, your Honor.

THE COURT: -- and not ask him some general questions which you just asked him. You are supposed to ask him some specific questions that encompasses the

facts in this case so these people can deal with it.

MR. HARRIS: Your Honor, let me tell you what I intend then so we don't have any mixup in signals.

I intend to show him the various exhibits which I have shown him, and he recognized them, involving the ex-pit transactions which took place in 1963, and ask him if he is basing his opinion on the transactions reflected therein.

I could have him go through one sample transaction.

THE COURT: I don't care what he does. The last question you asked him was not precise. You are apparently prepared to ask other questions. You have to ask Professor Gray precise questions that precisely involve the evidence in this case so that the jury can understand it, I can understand it, that he is basing it upon evidence here and the defendant can deal with him on cross examination.

MR. LIMAN: Your Honor, I don't mean to interrupt. I think that is prejudicial to have to do it. One of the exhibits is a long list of ex-pits involving to I would say a very minor extent my client, involving Ira Haupt very heavily, the commission broker, involving Cargill.

You have to understand what you are doing there.

MR. HARRIS: I do, your Honor. We are going to get later on --

THE COURT: All that is going to do -- that fact will be brought out, it is not known to those people.

MR. HARRIS: Your Honor, I think I first have to address myself to whether there was a manipulation which is what I'm doing now. Later in Professor Gray's testimony I will address myself as to what was known to which people, when, in 1963. I think that is a separate question because I first want to establish that there was a manipulation in 1963.

THE COURT: Do it any way you want, Mr. Harris. It is up to you. You proceed.

If there are objections to the question, I'm going to insist that they be precise, the questions.

For the record you have a man on the stand who apparently knows what he is talking about and if you give him the precise questions in evidence, then I think we may get some illumination on this trial.

MR. LIMAN: Your Honor, when he says that he wants to ask him whether it is based on the transactions

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(Jury present)

DIRECT EXAMINATION CONTINUED

BY MR. HARRIS:

THE COURT: All right, Mr. Harris.

Q Professor Gray, when you testified earlier that in your opinion there was a manipulation in the cottonseed oil futures market during 1963, were you basing your opinion on the transactions between Bunge and Allied Crude that are set forth on Plaintiff's Exhibit 260 for identification and on the transactions between Continental Grain and Allied Crude set forth on Plaintiff's Exhibit 255 for identification?

MR. LIMAN: May we inquire as to form whether it's both or one or the other?

A The answer is yes, I based my opinion on the -- I earlier referred to financing arrangement whereby registered warehouse receipts were held off the market. These are transactions with Bunge Corporation and Continental Grain Company which do, indeed, reflect the mechanism by which the warehouse receipts were helf off the market.

Q Sir, the ex-pit portion of the transactions referred to in Exhibits 255 and 260 for identification are referred to in Plaintiff's Exhibits 140 and 141 for

identification?

A Yes, that's correct.

Q Are these the transactions you were referring to when you talked about registered warehouse receipt transactions?

THE COURT: He just said he was, at least insofar as 260 and 255 are concerned.

MR. HARRIS: All right, your Honor.

Q Looking at Plaintiff's Exhibits 255A, B, C and D in evidence and 260A through F, these folders, sir, can you tell us whether the materials in the folders relate to thetransactions that you were just referring to?

A I don't know whether you want me to look at each and all of these, but having looked at the first of this series that refers to Continental Grain Company a few moments ago when I did not respond to your question in that regard and having now looked at the first of these pertaining to the Bunge Corporation, and on the assumption that this series from my recollection of having seen it before, I would say that these are the underlying documentation from the records of these firms for the exhibits that we have just been looking at which summarize information from these documents, yes.

Q Professor Gray, perhaps using an example of one of the transactions reflected there, if you would, can you explain to us how in your opinion these transactions that are reflected in those folders and on the charts that we have referred to constitute the basis for your opinoin that there was a manipulation on the market?

THE COURT: I'm sorry, Mr. Harris. I thought what you were going to do would be to put before Professor Gray all of the bases upon which he based his opinion and let him get that before us and then you can deal with each of them separately. I would prefer to understand on what he bases his opinions.

MR. O'DONNELL: I understood that Mr. Harris had done that. This is what he bases his opinions on.

THE COURT: I thought you were only dealing with ex-pits.

MR. LIMAN: I thought he said just those transactions reflected in those exhibits with respect to Bunge and Continental on which he's basing his opinion.

MR. O'DONNELL: I think that's what Mr. Harris was getting at.

Q Is there any other material, Professor Gray,

on which you base your opinion that it's not before you now?

A Perhaps I can clarify by saying that it seems to me --

MR. O'DONNELL: I object to this, your Honor. I don't think it calls for clarification. There is a simple question. Is that what the man bases his opinion on. Mr. Harris thinks it is.

MR. HARRIS: I asked him the question, your Honor.

THE COURT: All right. I will allow you to clarify it. I think the first thing you need to tell us is whether or not those are the things you base your opinion on.

THE WITNESS: These are the things I base my opinion on, your Honor. By that I mean that the evidence here before me would, it seems to me, be sufficient to allow me to form the conclusion that there was a manipulation.

Now, if one adverts to other evidence of other corporations, other firms not here defendants doing the same thing, I would say that that adds to the extent of the evidence of the manipulation.

MR. LIMAN: He said March 4. Your chart says March 5.

MR. HARRIS: It hink the witness was in the middle of an answer.

THE COURT: He hasn't started. He is about to. He is waiting for you so he can respond.

Q Proceed, professor.

A The documentation in Plaintiff's Exhibit 260B for identification refers to the purchase by the Bunge Corporation -- I think I want to back up there and say refers or includes what is called a purchase contract by the Bunge Corporation of 159 warehouse receipts from Allied Crude. The reason that I corrected myself is that I have the opinion that these were not bona fide purchases and sales that were treated as such.

MR. FRYER: Your Honor, I object. I think that was unresponsive and I think it is a conclusion of law.

THE COURT: Objection overruled. At this point I don't believe that is a valid objection, Mr. Fryer.

Continue, professor.

A We have a purchase contract, copy of a purchase

A When t' : purchase contract --

MR. O'DONNELL: Objection, your Honor, to how it worked. Unless he is basing his opinion on it.

MR. HARRIS: He is, your Honor.

THE COURT: Professor Gray has indicated to us that he believes or reached the conclusion, or is of the opinion, to be more precise, that a manipulation of the market occurred, based upon the exhibits before him.

And he is now, I think, dealing with 260-B. The question isn't how was it worked. What we need to know from him is in what way does that indicate manipulation.

Let him deal with that. Then you won't have all these objections, Mr. Harris.

MR. HARRIS: I will adopt your question, your Honor.

Q In what way does the transaction reflected in 260-B constitute a manipulation, in your opinion, or part of the manipulation you testified went on in 1963?

A What we have reflected in 260-B is the process by which the warehouse receipts were for a period of time held off the market and the proceeds by which Allied Crude was financed, in this case by the

Bunge Corporation. The warehouse receipts were endorsed over to the Bunge Corporation and at that same time the ex-pit transactions in futures in the same amount were engaged in between Bunge and Allied Crude as the principals, and then after the lapse of some time, these warehouse receipts that had been held by, in this example the Bunge Corporation, were sold, transferred, endorsed back to Allied Crude, and the ex-pit transactions that had previously been engaged in were then ex-pitted in the other direction, so that once again when the warehouse receipt was transferred to Bunge Corporation, Bunge Corporation was short in the futures market in the same quantity in an ex-pit transaction, and Allied Crude went along in the futures market in the same quantity in an ex-pit transaction.

Then, when the warehouse receipts were endorsed back over to Allied Crude, they reversed the ex-pit transaction, which then eliminated or covered or closed out positions that they had been holding in the futures market. The basis for my conclusion, my opinion was it was a financing arrangement that is reflected in this kind of transaction, was that the resale in fact did occur and that we saw from the records of the Bunge Corporation that the resale or

the return, the reendorsement of the warehouse receipt back over to Allied Crude was done repeatedly on the basis of the same formula price.

This, in the case of the Bunge Corporation, forms the basis for my conclusion that it was not intended that the ownership of the cash oil represented by these warehouse receipts would be really transferred to the Bunge Corporation, but rather that it was intended that these would be reendorsed over to Allied Crude at a formula price, and the intention then was further manifest in the fact this occurred in each of these cases.

MR. LIMAN: Your Honor, I move to strike his testimony as an expert as to his opinion as to what the contention was of party. I think he can testify as to whether he considers a transaction to be manipulative or not, but I have never heard an expert give testimony as to what his opinion is as to what somebody's intention was. Those people were on the stand; Gittleman was on the stand, DeAngelis was on the stand.

Now we have a man who wasn't party to the transaction saying that in his opinion their intention was this or that. I don't think that is a proper basis for expert testimony in this case or any other case.

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MR. HARRIS: Your Honor, I think what the witness is testifying is whether these transactions were in an economic sense, and we will get to more detail on that, bona fide transactions or not bona fide transactions and he says he is basing this on an opinion as to what the record reflects.

All he ultimately said was his conclusion as to their intention is that they intended what the ultimate record reflects, that is all.

He didn't get into what somebody was thinking about a particular matter on a particular day.

I would agree with Mr. Liman. That wouldn't be proper testimony.

MR. LIMAN: If his opinion here as to any of his ultimate conclusions as to manipulation or as to bona fideness of transactions is based upon an opinion he has as to intention, I don't think he is allowed to speculate as to intention.

I think they have to have testimony as to what the intention was. We have now had five weeks of trial.

THE COURT: Obviously that is correct, but I don't think that -- I am going to assume that Professor Gray wasn't talking about the processes that went on in

the minds of the people. I think -- well, you better ask him questions. You can clarify the questions.

If he is talking about the processes that went into the mind of the people that made the contract, Mr. Liman is obviously correct.

Q Professor Gray, you just heard the colloquy among counsel.

When you indicated in your answer about the intention of Bunge, were you referring to the effects of the transaction, what was going on in a particular person's mind at a particular date?

A When I see a series of these transactions in which what is reflected after the completion of the round trip transaction is the same formula price in each of the transactions, then in my view it strains coincidence far too much to say that these were at the beginning, at the inception, and then at the return arm's length negotiations over price and thereby bona fide cash transactions.

MR. LIMAN: I move to strike all of his testimony, your Honor. If one thing has been established in this record, it is that Mr. DeAngelis dealt at arm's length with anybody negotiating as good a deal as he could get.

THE COURT: Let's just say, Professor, as I understand your testimony, you are saying in looking at that exhibit, the purpose of the ex-pit transactions as you viewed it, the purpose and effect was not to transfer ownership of the receipts?

THE WITNESS: Yes, your Honor. I'm saying that. If I may, your Honor, I'm saying this is evidence that these were prearranged, and I don't doubt for a moment pursuant to Mr. Liman's observations that the financing arrangement was negotiated to the best of Mr. DeAngelis' interest, the financing arrangement was negotiated at arm's length, if you will; but what I'm saying is that the individual portions of this that are represented by the transfer of warehouse receipt at one end and then back to Allied Crude were not then subsequently renegotiated at arm's length, and in that I find reflection of a prearranged transaction.

MR. FRYER: I object. I think he is assuming facts that are not in evidence now, they were prearranged.

THE COURT: I don't believe he is talking about that. That objection is not valid. It is overruled.

All right.

Q Professor Gray, can you tell us how in your opinion keeping these warehouse receipts off the market constitutes a manipulation or constituted a manipulation in 1963?

A I think that in any situation where a substantial portion of the available supplies of a commodity are deliberately held off the market, that will

have the effect of sustaining the price or supporting the price.

Again, in an analogy which I started to develop at an earlier point, this was the procedure whereby the United States Government for a long-period of years supported the price of a number of commodities by deliberately withholding from the market portions of the supply. It has the same effect whether quantities are withheld from the market by an individual or firm in manipulative operation or by the Government in what might be referred to as a legal manipulation of price.

Q Do you have an opinion on what the effect on the market price would have been in 1963 had these warehouse receipts not been held off the market?

MR. LIMAN: Do we understand that he is giving the testimony based on those documents in front of him, your Honor? That is what your Honor said the procedure was.

THE COURT: Yes.

MR. LIMAN: Fine.

A I'm sorry now. I have lost Mr. Harris' question.

THE COURT: What would have been the effect if the warehouse receipts that are reflected in the

documents that you have before you had not been kept off the market?

THE WITNESS: In my opinion --

THE COURT: In terms of the price.

MR. HARRIS: Yes, your Honor.

THE WITNESS: In my opinion, the price would have been depressed to a lower level if these warehouse receipts had been released to the market.

MR. MINNEROP: Your Honor, may we know whether the witness is talking about registered warehouse receipts or any warehouse receipt here?

THE COURT: You can ask him that in your cross examination. I'm going to assume that he is talking about warehouse receipts that cover cottonseed oil and the warehouse receipts that are reflected in those exhibits, whatever they are.

I don't know what they are.

MR. HARRIS: I will clear it up, your Honor.

Q Were those warehouse receipts reflected on the exhibits before you registered warehouse receipts, not registered or some of each?

A These reflected in these exhibits are registered warehouse receipts.

Q Professor Gray, with regard to the other

folders before you in connection with Bunge Corporation, which would be 260-A and 260-C, D, E and I guess F; do you have an opinion as to whether the transaction reflected in those folders had the same effect on --

THE COURT: Mr. Harris, Professor Gray has testified that based upon 260-A, 255, whatever those letters are, that he is basing his conclusion that there was a manipulation on the market. You asked him to give us an example of how it worked in respect of 260-B. He has already answered your question. He said that clearly.

He didn't have to answer that question again.

Q Professor Gray, just one final question on this.

The example you gave dealt with Bunge Corporation. Do the transactions that you have before you involving Continental Grain and Allied Crude have the same effect on the market and constitute a manipulation, in your opinion, as you just described with Bunge Corporation?

A My opinion, they would have a similar effect by virtue of the fact that the total number of warehouse receipts that were held by Continental was less than that held by Bunge, and the quantitative effect would be diminished.

Q Professor Gray, with regard to the ex-pit portion of the transactions that we have been discussing that are reflected in the exhibits before you, do you have an opinion as to whether from an economic point of view those ex-pits were legitimate ex-pits or not?

MR. LIMAN: Objection to the form of that question, your Honor. It calls for a conclusion.

THE COURT: Tht objection is sustained. I don't understand what you mean by legitimate. The objection is sustained.

Q Can you explain the purpose of ex-pit

trading during 1963 in commodities futures markets?

MR. LIMAN: Objection again to that question. Markets plural? Is he asking him to explain these transactions?

THE COURT: I don't understand that.

MR. HARRIS: I am contrasting these transactions with what he understands the purpose of ex-pit trading was in 1963, your Honor.

MR. LIMAN: If that's the purpose of the question, your Honor, it seems to me it's inherently objectionable.

MR. HARRIS: I'm talking from an economic point of view. I'm not asking for a legal conclusion.

THE COURT: Professor Gray has indicated to us thathe thought the effect of these ex-pits, the purpose and effect, they didn't involve any change of ownership and they kept for a time oil off the market which if it had been put on the market in his judgment would have depressed the price. He, therefore, says as I understand his testimony, that on that basis he concludes that these were a part of manipulation. I don't understand what the legitimate and all that sort of thing is.

Why do we have to get involved in that?

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MR. HARRIS: I think it's just another ramification of these kinds of transactions, your Honor. There was an ex-pit side itself that accompanied each one of these transactions. I was going to explore --

THE COURT: If you are going to ask questions like that, you are going to have to be more precise, Mr. Harris.

MR. HARRIS: Okay, your Honor.

THE COURT: Things are too fuzzy. Youare going to have to be precise.

Q Let me ask you a different question, Professor Gray.

Earlier we spoke of the term integrity of contracts. Do you have an opinion as to whether or not the activities of Allied Crude in cottonseed oil during 1963 affected the integrity of contracts on the New York Produce Exchange?

THE COURT: In regard to these ex-pits, that is what we are talking about?

MR. HARRIS: Yes, your Honor.

THE COURT: All right. You may answer that.

A I think that the long futures position which Allied Crude had as a consequence of these ex-pit trans-

actions reflected in these exchanges of warehouse receipts -- it's a long sentence -- I think that these futures positions lacked integrity. I based that opinion on hte fact that first I think that these futures positions were not established in an appropriate manner, were not a reflection of real underlying cash transactions and, secondly, on the fact that the terms upon which Bunge and Continental held these warehouse receipts off the market reveal very clearly that Allied Crude was nota very good credit risk. Had Allied Crude been a very good credit risk, they could get more favorable terms and have borrowed money against these warehouse receipts, but they were paying to Continental and Bunge in an arrangement which I view this being strictly interest payments to Continental and Bunge because of the fact that these warehouse receipts were going to return to Allied Crude, were paying exhoritant rates of interest, which is a reflection of the fact that Allied Crude was not and would be known to them not to be a very good credit risk, and finally also reflected in these transactions was it necessary that Allied Crude was confronted with holding warehouse receipts off the market in order to defend its futures position and maintain price.

So as to the integrity of the contracts, the contracts that arise out of a manipulation of price, a price support plan, seems to me, per se, lack integrity.

(Continued on next page)

elr Gray-direct [4398]

Q Professor Gray, there's been prior testimony in this case that Allied Crude bought at the close of the market during 1963.

There's also been testimony in this case that Allied Crude throughout 1963 was building up increasingly long position in the market.

There's been further testimony in this case that Allied Crude's long position in the market was not a hedged position.

Assuming those factors that I have just mentioned to be true, sir, do you have an opinion as to whether or not the trading activities of Mr. DeAngelis during 1963 constituted a threat to orderly market conditions on the New York Produce Exchange?

MR. O'DONNELL: Objection, your Honor. The witness has expressed his opinion, and he'd given us the material that he based it on, as to a manipulation of the market. I think this is some kind of a hypothetical question in which Mr. Harris is making various summaries of a lot of testimony.

I don't think it appropriate for him to express a hypothetical opinion based on a hypothetical question, at this point.

THE COURT: That is precisely what I asked

Mr. Harris to do in the first place. The objection is overruled.

THE WITNESS: I'm sorry, your Honor, but that was a rather long question and I have lost most of it.

THE COURT: It can be read back.

(Question read)

A I am aware of the testimony regarding the buying at the close; the testimony came in through Mr. Gittleman, for example, and Mr. Fontana. I am generally aware ofthe buildup of the long position by Allied Crude and of the fact that this was not a hedging position.

The buying at the close of the market -- in the first place, I might make this distinction. The mere fact of the buying at the close is not in and of itself evidence of any disorderly marketing or anything of that nature.

Repetitive buying at the close by one party who has a position and who is building up a position, long position in futures, and who is confronted by the possibility of variation margin calls if prices decline, is indeed suggestive of an effort to influence price and that buildup of the position and the fact that it was not a hedged position, is indeed given the extent

to which it was built up and that it was not a hedged, is indeed suggestive that there was a threat to orderly marketing here.

Q Professor Gray, according to Plaintiff's Exhibit 133 in evidence Allied Crude held 83 per cent of the total open interest in the near month on July 15 of 1963, and that position gradually increased, until in November Allied held well over 90 per cent of the near month position.

Plaintiff's Exhibit 133 in evidence also indicates that on July 15 Allied Crude held 58 per cent of the total open interest -- I am talking about cottonseed oil futures -- of all months, total 58 per cent, and that position increased to over 90 per cent by November, by mid-November, 1963.

Based on those figures, sir, do you have an opinion as to whether the position of Allied Crude Vegetable Oil in cottonseed oil futures during the period July to November, 1963 constituted a threat to orderly marketing conditions on the New York Produce Exchange?

A Could I request that I see that so that I get one date in mind?

Q Sure (handing).

elr Gray-direct [4401]

(Pause)

THE COURT: This is somehow distinct from the question you asked before?

MR. HARRIS: Yes, your Honor. I am pointing specifically to Allied position rather than its buying activities.

THE COURT: As I understand it, you are asking him the very fact of Allied's long position, as to whether that alone --

MR. HARRIS: Yes.

THE WITNESS: May I ask again whether that alone does what?

Q Whether that constitutes a threat to orderly marketing conditions, or whether it constituted.

THE COURT: On the New York Produce Exchange in 1963?

MR. HARRIS: Right.

A I would prefer to respond, thanks to his Honor's calling to my attention that referring to this loan, which I might otherwise have tended to forget.

I would prefer to say that these data alone would indeed suggest the possibility of a threat to orderly marketing.

I'm not sure that in every instance where

elr Gray-direct [4402]

one saw this kind of percentage concentration, that it would necessarily constitute such a threat.

Q Can you tell us what other factors would enter into that determination?

THE COURT: Into what determination?

MR. HARRIS: As to whether a position like that would in fact be a threat to an orderly market.

THE COURT: He said it wouldn't alone.

MR. HARRIS: Now I want to know what other factors he would want to know.

THE COURT: What you want to know is, in addition to the concentration alone, what other factors would he deem necessary to be present to constitute a threat, is that what you are saying?

MR. HARRIS: Yes, your Honor.

A Looking at just the material in Plaintiff's Exhibit 133 I would not know, for example, whether this position or these positions were bona fide hedging positions. I would not know from this figure about the financial condition ofthe operator in the market here. I would not know anything about the concentration of, let's say, the typical or historical or traditional concentration in the cash end of this business.

I would be certainly, in looking at just

these data, alerted to the possibility that there was a threat, and I would want to have other information of the sort that I have just mentioned.

Q Professor Gray, are you familiar with the information --

THE WITNESS: Excuse me, your Honor. Am I permitted to elaborate further?

THE COURT: Yes.

A One point I would add to your earlier question is, these data alone do not tell me what the open interest -- which I could compute from this, since I have given a percentage -- but they don't tell me how that open interest in that futures market relates to the total volume of business or production or quantities of material. This could be 10 per cent or it could be 100 per cent of total available supplies.

Q Professor Gray, are you familiar with the kinds of information that were available to the people active either on the board of managers or on the trading floor of the New York Produce Exchange during 1963?

A Yes, I am generally familiar with that.

Q Have you reviewed prior to coming here today some of the information thatwas available to

Maybe you don't. At what point did the warning signals, et cetera, and what were they, that Bunge, Continental, Merrill Lynch, and at what point should the Board of Managers of the New York Produce Exchange, and let him tell us that. That is the kind of question you are asking.

MR. HARRIS: I was going to ask which information reflected it, and then I was going to ask who saw that information. But I can ask it the other way.

Q What point, Professor Gray, in your opinion during 1963 would Bunge and Continental and Merrill Lynch have been aware of these manipulative activities that you described earlier this morning?

A Well, in the case of those three, at different points, I presume, at such time as, for example, Bunge knows that it is holding a substantial quantity of warehouse receipts of the market which are going to be returned to Allied Crude, and Bunge at that time knows that this is going to have some price effect and Bunge at that time knows whether or not the transfer of the warehouse receipts is indeed a bona fide cash transaction.

At such other date, and I realize that one can learn by looking at some of the exhibit when these dates occurred, at such other dates that Continental

might be holding a substantial quantity of warehouse receipts --

THE COURT: What I think you better tell us, you better define substantially, at that point. Because you gave some examples, as I recall your testimony, the example you gave, Professor Gray, was of a -- I can't remember -- it is 260-B, I believe, in which 159 registered warehouse receipts were involved. That was on March 4, 1963.

Is that the warning to Bunge at that point?

THE WITNESS: That, in fact, your Honor, was not the first one.

THE COURT: I thought the example you gave me was 159.

THE WITNESS: It was. It happened that I did not choose the first instance in which Bunge held any substantial quantity of warehouse receipts. The first instance in which Bunge held substantial quantities entailed -- was actually in late February, February 27, 1963, a total of 696 cottonseed oil warehouse receipts.

THE COURT: What would you describe as substantial? How many warehouse receipts would you feel would be substantial?

THE WITNESS: The question, if I may, your Honor, of manipulation is obviously one of degree. The question of how much buying needs to be done that would not otherwise be done would have some influence on price depends on the size and conditions in the market.

That circumstance, I am somewhat loathe to try to give you a precise figureas to when we have now reached a substantial.

I think that you would have some trivial or minor effect upon price by holding some small quantity of warehouse receipts off the market and some larger effect by holding a larger quantity.

In the context of the size of this market,

I would be inclined to say that a quantity of warehouse receipts of the order of magnitude of 500 or 1,000 warehouse receipts is significant or substantial quantity of warehouse receipts. Obviously larger quantities are more significant and lesser quantities less so.

THE COURT: At whatever point that Bunge and Continental Grain involved in these ex-pit transactions held 500 and in excess of warehouse receipts, it is your testimony that that was a warning sign that there was a threat to the orderly market?

THE WITNESS: Yes, sir.

THE COURT: All right.

BY MR. HARRIS:

Q Just so the record is clear, I believe you stated on February 27, 1963 Bunge Corporation received 696 warehouse receipts?

A Yes.

Q Turning to the second page of Exhibit 260 for identification, do you see a transaction where Bunge received in 1963 an even larger number of warehouse receipts?

A Yes. On July 1, 1963 --

THE COURT: What is that? Is that A?

MR. HARRIS: This is transaction C, your

Honor.

THE COURT: I'm sorry. 260-C?

THE WITNESS: Yes.

THE COURT: All right.

A On July 1st Bunge had transferred to it 1,558 registered warehouse receipts, 1,558.

Q Professor Gray, I would like to show you Plaintiff's Exhibit 249 in evidence which indicates that on that date, July 1st, there were outstanding a total of 2,303 warehouse receipts issued by the Produce Exchange.

In your view is 1,558 registered warehouse receipts transferred to Bunge on that day a substantial number?

A Well, I would say on other grounds, with the same reference that I said a moment ago, that it is a substantial number.

Again, 1,558 is somewhere between two-thirds and three-fourths of the total number outstanding, and that is obviously a major portion.

Q Let's turn to Continental Grain, Professor Gray, Exhibit 255 for identification, and ask if you can indicate when Continental Grain received a substantial amount of warehouse receipts during 1963 from Allied Crude?

A Perhaps I should give just the amounts and

then qualify these as to whether they are substantial, half substantial or what in terms of my prior discussion of that.

MR. LIMAN: Did you say half substantial? I missed a word.

MR. HARRIS: Yes.

MR. LIMAN: That is all I wanted to know.

THE WITNESS: I'm saying -- I'm coining that phrase, half substantial, Mr. Liman, because I had just indicated to his Honor that an order of magnitude of 500 or 1,000 would certainly be substantial and some lesser number would be obviously somewhat less substantial.

Now, on April 26th Continental Grain Company took over 245 registered warehouse receipts and on July 31st they took over 600 and on August 2nd an additional 257.

Q Based on your review of Exhibit 255 for identification, do you have an opinion as to what point during 1963 Continental Grain was on notice as to these activities you described Mr. DeAngelis engaging in to constitute a manipulation?

MR. LIMAN: I object to the form of that question, your Honor.

THE COURT: The objection is sustained.

MR. HARRIS: I will rephrase it.

THE COURT: The Professor has before him the question. You don't have to ask it again.

MR. HARRIS: I'm sorry.

MR. LIMAN: I thought he was being asked when the quantity which Continental Grain acquired was substantial in the terms that he has used those words.

THE COURT: Yes. You may answer. He has already given us the limits.

MR. LIMAN: I assume it is the end of July, beginning of August. If that is what he is saying, let him say it.

THE WITNESS: I hope, your Honor, that my prior discussion of orders of magnitude here still would allow me to say that 245 warehouse receipts is not insignificant. 875 is obviously more than three times as significant.

MR. LIMAN: Has he answered the question? I move that it be stricken, that answer. He was asked when it was substantial in the terms that he used that word. Is he saying 245 was; is he saying it wasn't until they acquired the 800? Because they didn't have them both at the same time.

THE COURT: I think you ought to answer it. I had assumed that your testimony about substantial was between 500 and 1,000 and when they reached that point that you regard it as being substantial, substantial in the terms that you utilized it?

THE WITNESS: You want me to respond, your Honor, to Mr. Liman's --

THE COURT: I want you to respond to my question. You are not supposed to respond to Mr. Liman's question until he gets over there.

(Indicating)

THE WITNESS: All right. If I'm going to be hoisted by my own petard of 500 to 1,000, then to be consistent with that we will say that as of July 31st this was substantial, and I can only say that in light of my earlier conversation 245 is significant.

THE COURT: All right.

Q Professor Gray, we have had some prior testimony in this action --

THE COURT: We haven't finished. We now have reached the point where the Professor has told us at what point he thinks that Bunge and Continental Grain had sufficient signs, evidence before them in regard to Allied that there was a threat to orderly marketing.

I don't think we have dealt with Merrill Lynch.

MR. HARRIS: That is what my next question was.

THE COURT: I'm sorry. I didn't get the idea. I'm sorry. I didn't understand that that is where you were going.

MR. HARRIS: I'm sorry, your Honor. That was precisely where I was going.

Q Professor Gray, there has been some prior testimony in this, and I don't think there is any dispute that Merrill Lynch acted as broker for Bunge Corporation in the ex-pit transactions reflected in Exhibits 260-A through F -- and I would like to show you Plaintiff's Exhibit 142 for identification which reflects ex-pit transactions that took place during 1963 in which Merrill Lynch acted as broker for Bunge and others, and ask you the question as to when in your judgment Merrill Lynch in their capacity as broker for Bunge in these ex-pit transactions became aware of Allied's activities that we have been testifying about here?

MR.MINNEROP: I object to that. When the Professor testified as to Allied's activities in relation to these financials and whatnot, there was no reference that Merrill Lynch knew. There is no testimony in this case that Merrill Lynch was privy to those financials

or these arrangements.

Now to bootstrap this thing into something that Merrill Lynch should have known I think is totally unfair.

THE COURT: That may be true. I'm sort of at a loss how to frame this question, have this question framed fairly.

MR. MINNEROP: I think whether something becomes a warning signal or not depends to a large extent as to what you knew or should have known at a given point in time.

THE COURT: All right. I think you have given us the key to it.

MR. HARRIS: I will ask it, your Honor.

THE COURT: Then I think we ought to ask you in regard to its dealing as a broker in these transactions, what was it that Merrill Lynch knew or was required to know in your judgment to be warned that these transactions constitute a threat.

MR. MINNEROP: Based on the evidence before this Court.

THE COURT: Of course, that is what we are talking about.

THE WITNESS: Well, Merrill Lynch knew by virtue as serving as a broker for Bunge in these ex-pit

transactions that they were very large and unusual transactions.

MR. MINNEROP: I object to the unusual. We don't know what unusual means.

THE COURT: He is talking about the transactions that are reflected in 260-A to F. When you get up, you can deal with him in regard to what unusual is with regard to each of the numbers.

All right. You had said that Merrill Lynch knew these transactions were unusual. That is as far as we allowed you to get, Professor.

THE WITNESS: I think, your Honor, that is as [illegible] as I wish to go with that answer at present. That is the time at which Merrill Lynch saw this particular indicater of what was going on.

THE COURT: I take it then that you mean by that that Merrill Lynch did not have to know anything about the underlying financial arrangement but the fact that it was handling a transaction which kept off the market a substantial quantity of oil, that that was in itself sufficient, from A to F.

THE WITNESS: Merrill Lynch could see, of course, that -- being broker going both ways with Bunge Corporation, could see that for that period of time

Bunge Corporation had held the warehouse receipt which then was sold back to someone else.

THE COURT: All right.

You have got the basis of his answer, Mr. Minnerop.

All right, let's proceed.

gr3 Gray-direct (4424)

I was under the impression that I was responding as to when Merrill Lynch might first have gotten some indication of what was going on here.

THE COURT: Certainly. That is the question. It was my impression that it's your testimony that they got that indication when they handled these transactions that involved these large amount of warehouse receipts?

A And thelarge ex-pit transactions, yes, your Honor.

THE COURT: All right.

What else?

Q Professor Gray, do you have an opinion as to when persons who were not from Continental, Bunge or Merrill Lynch became aware of market factors that should have indicated that Mr. DeAngelis' activities were manipulating the market during 1963?

MR. LIMAN: I object to the form of that question. It implies that Harold Vogel was aware of these transactions.

THE COURT: The objection is sustained.

MR. LIMAN: If he wants to give an opinion on Harold Vogel, I wouldn't object to that.

Q Professor Gray, based on your review of the market factors and the information that was available

during 1963 in connection with cottonseed oil futures, was there any information published by the Commodity Exchange Authority on a regular basis during 1963 that indicated in your view that something unusual was occurring in the cottonseed oil futures market?

MR. O'DONNELL: Objection, your Honor, unless we know what information he's talking about.

THE COURT: He's going to give us thatin his answer, Mr. O'Donnell.

A There was an unusual change in the composition of the open interest as reported by the Commodity Exchange Authority which in my judgment should have alerted the board of managers of this exchange to the need for further investigation, desirability of further investigation.

That change in composition of the open interest that I'm referring to occurred roughly between the months of March and July. These are end of month reports. And the portion of the open interest reported as long hedging over that time interval rose from 10 per cent to 70 per cent in rough numbers.

Obviously that would mean as that portion goes from 10 to 70, that some other portions have to change commensurately. I think the one that I would

have focused upon or that the board of managers might have focused upon would be the change in that particular element of the composition.

Under the circumstances of that time, this would suggest, if it was a reflection of a growth in legitimate hedging, this would suggest that there must have been considerable expansion in export sales commitments in particular because it was export sales commitments in this market that tended to give rise when there was long hedging to such positions.

It could have been a reflection, I think unlikely in the history ofthis market, but it could logically and legitimately have been a reflection of the establishment of anticipatory hedging positions by processors who used vegetable oil such as Proctor & Gamble or firms that make items out of vegetable oil,and it would have been, it seems to me, satisfactory to the board of managers if they could have established that this very rapid growth in that segment of the open interest was attributable to such legitimate hedging.

They lacked evidence as far as I know of any great expansion in export sales commitments. Obvicusly we know by hindsight that the users of vegetable oil in the United States were not suddenly

motivated as they had not been in the past to greatly expand anticipatory hedging. They wouldn't have thought that the board of managers at that time would have expected this to have been occurring.

So in general I think this was a signal to them that came in regularly published data that requ9red further investigation.

Q I just show you Plaintiff's Exhibits 10C and 10G in evidence and ask if that is the regularly published data that you were referring to in your last answer?

A Yes, it is.

Q Professor Gray, there's been testimony, prior testimony in this case that the number of contracts settled by delivery on the New York Produce Exchange was increasing during 1963.

Was this information as to the increasing number of deliveries on the produce exchange in 1963 available in your opinion to the board of managers during 1963?

THE COURT: He's testified to that, I believe, that theex-pit transactions were among the information that was available. I think he testified to that earlier.

elr1 Gray-direct [4428]

Q I show you Plaintiff's Exhibit 126 in evidence which indicates that the volume of ex-pit trading that took place in 1963 went up from the prior years.

Do you have an opinion as to at what time during 1963 information that was available to the board of managers of the New York Produce Exchange would have some basis for concern in the increased volume of ex-pit trading?

A I think, not to build myself a numberical trip again where I need to pinpoint a particular number, we do see a steady rise during the year, and we see that in context of the prior two years, this is unprecedented.

It seems to me that any time from May forward you had a sufficient quantity of ex-pit trading going on to require investigation.

Q What kind of investigation are you referring to, sir?

A Well, at a minimum, to assure that the underlying documentation was provided in support of these ex-pit transactions, and in particular if you are endeavoring to ascertain whether these are in reflection of real cash transactions, you want documentation and such

documentation as had been required by amendment to the 6B portion of the ex-pit rules, as recently as November of 1972 --

MR. LIMAN: '62.

A '62, thank you.

-- that amendment referred to a full description or a complete description, as I recall, of the underlying cash documets; in my judgment a complete description of underlying cash documents would include a minimum the names of the principals, the prices and the quantities.

When you see this unprecedented volume of ex-pit transactions at a time in particular not long pursuant to the amendment of your ex-pit rule, it would seem to me that a minimum you might at that time enforce that amendment by requiring that you see full documentation of the ex-pit transaction.

Q With regard to the change in the commitments of traders on the long hedging side that you referred to earlier and is reflected in those exhibits 10C and 10G that I showed you, what kind of investigation could the board of managers have made to ascertain what was in fact happening there?

A You can investigate only in two directions.

The board of managers, of course, could ask the Commodity Exchange Authority which is publishing these data whether the long hedging positions reflected are concentrated in the hands of one or two or a few parties; whether the Commodity Exchange Authority has itself undertaken to ascertain whether these are bona fide hedging positions; ask to see the evidence such as export sales contracts.

The other route that might be taken simultaneously or pursuant to a direct contact with the Commodity Exchange Authority, would be to ask the clearing house whether there is any indication of concentration of positions that might be reflected in these positions; directly ask either the clearing member or members or the parties for whom they are doing brokerage in these transactions, and to identify their hedging customers and ascertain by direct inquiry of the ostensible hedger here, whether he's hedging and what the evidence is, whether he or others, whoever it might be, has evidence that these are bona fide hedges.

Q Wasn't this information that the clearing house had confidential and therefore not available to the board of managers?

gwrf pm 1a

[4439]

AFTERNOON SESSION

2:00 p.m.

(In open court, jury present.)

R O G E R G R A Y, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. HARRIS (Continued):

THE COURT: All right, Mr. Harris.

MR. HARRIS: I just want to go back and clear up something we covered this morning, your Honor.

Q Professor Gray, we had testimony and I think you indicated this morning that the number of deliveries on the New York Produce Exchange was increasing during 1963.

I show you Plaintiff's Exhibit 135 for identification and ask you whether you are familiar with or whether you know whether Allied Crude's activities were in any way related to the increased volume of delveries taking place on the New York Produce Exchange during 1963?

A Yes, this Exhibit 135 for identification shows that Allied stopped 74 per cent of the contracts that were settled by delivery -- I'm sorry -- 72 per cent of the contracts that were settled by delivery during

1963.

Q Professor, in your opinion, were increased deliveries that took place on the Produce Exchange during 1963 a signal of anything amiss or unusual taking place?

A Yes, in my opinion, this would be a signal. The deliveries that take place normally are not a high proportion of the contracts settled. The fact that the majority of these deliveries were stopped by Allied Crude is indicative of the need that Allied Crude had to support markets and prevent these deliveries from depressing the market.

If I might elaborate just briefly. A general tendency in a futures market when there is a wak tendency in prices is for delivery notices to occur early in the delivery period, and if there is not a market for these warehouse receipts at that price level, whoever might receive those delivery notices will not want to stop them and pay for them, but will want instead to trade out his fugures position, pass the delivery notice on to somebody else and so on, until either they are not retendered because the seller at this point is willing to go into the pit and trade out of it or until it comes to the last possible long and he has

This process, if a large number of delivery notices occur early in the delivery month, tends to lead to the retendering of deliveries and the depression of futures prices until futures prices are in conformity with the cash market value of the warehouse receipts.

In contrast with that, if the longs in the marketplace feel that delivery on futures is their best opportunity to have the cash commodity, if they don't see cash commodity at that price available to them and they want the commodity, then it will work the other way, the longs will stand for delivery and the shorts will be reluctant to make delivery, and such delivery notices as appear will tend to occur late in the delivery month andthis will have had a price strengthening effect in futures bringing futures into conformity with the market value of the cash commodity at the time.

Now, what occurred in this instance is that there was in the first place a weakening tendency as manifested by the fact that substantial delivery notices appeared early in the delivery period, but the rest of this process typically did not occur, whereby the delivery notices were retendered from one long to another, in part, especially as we get along later in the year, because Allied Crude held most of

the long position, then the delivery notices would move directly to them. And because Allied Crude had a necessity to prevent this price depression that would have occurred if these had moved into the market for the cash commodity, Allied Crude arranged financing to stop the delivery notices.

MR. O'DONNELL: I move to strike that answer, your Honor, based upon the fact that it seems to be a statement of various facts that are not in this record at all and certainly not in the documents before the witness.

I don't believe in the case in any point. I move to strike the answre. He was shown a document that was an exhibit for identification whichwas some confidential report by Allied to the CEA or at least statistics based on it, nothing else.

On that basis he's taken off on this haul off language.

THE COURT: The motion is denied. As I understand what Professor Gray has said, he's talking in terms of his knowledge of Allied's long position, his knowledge in the record, the fact in the record of these ex-pit transactions and their financing and their turnover, and based upon that he's come to his conclusions.

elr1 Gray-direct [4444]

MR. LIMAN: Objection to the form of that.

THE COURT: What was available?

MR. HARRIS: Information regarding the volume of deliveries.

THE COURT: How many times do you want him to answer that question? He's already indicated to us this morning that the deliveries -- that was part of the information, he said, that the exchange had.

MR. LIMAN: It was posted on the exchange floor along with the ex-pits.

THE COURT: That is what he said.

MR. LIMAN: Posted on the board.

THE COURT: You have asked him that question now three times.

MR. HARRIS: I'm sorry, your Honor.

Q Professor Gray, do you have an opinion?

What point during 1963, in your view, did the board of managers of the New York Produce Exchange have sufficient information through the course of ordinary channels of information to indicate enough of an indicia of a disorderly market that you believe they should have commenced to take some kind of action.

MR. FRYER: I object to the form.

THE COURT: Read that back.

(Question read)

THE COURT: I will let him answer. I'm not too happy with the question, but I will let him answer.

A In my opinion, this point of time would have been reached no later than sometime early in August. I base that on the fact that the information that I have been discussing as having been signals of something being possibly wrong, was all available by that time, information on the ex-pits, of course, was available; and information on the deliveries as I testified earlier, both as to the ex-pits and the deliveries, and finally, I'm not sure at this moment what date the CEA would have released their report on the composition of trading, but I am confident that it would have been available early in August.

Q Professor, can you tell us what you believe the board of managers of the New York Produce Exchange should have done when they had this indicia early in August 1963?

A Well, I think they should have conducted an investigation to ascertain various facets of the pictures. I think they should have, as I mentioned this morning, go to the CEA and pursued this question of

the rather dramatic rise that had occurred in the reported long hedging, and tried to ascertain whether that was concentrated or not.

I think at the same time they should have requested that full documentation be provided on all of the ex-pit transactions then extant, and I think they should have found out from the clearing house whether and to what extent there was concentration both in the existing net positions of clearing members and in the recent trading of such members.

I think they should have made an effort to understand -- to apprehend from the exchange official charged with observing floor practices what trading patterns had been observed recently, and I think that they should have pursued the question as information would have unfolded here, they should have pursued the question as far as they needed to pursue it, to be absolutely satisfied that this position they would have discovered reflected legitimate bona fide hedging position and to assure themselves that the financial integrity of the owner of this concentrated position was beyond question.

Q Professor Gray, I think this morning I directed your attention to Plaintiff's Exhibits 130 and

131 for identification, which are charts based on reports of the clearing association. Prepared by Mr. Ellison.

In looking at those exhibits -- let me back up and ask you one question before that.

With regard to your prior testimony about --

THE COURT: Do I have 131? I should.

MR. O'DONNELL: Those are the two exhibits you sustained objection to yesterday.

THE COURT: I know what they are, but I have so much before me, I can't keep up with it.

MR. HARRIS: Here, your Honor. (handing)

Q With regard to your prior answer about making an inquiry of the clearing association, Professor Gray, would you tell us what you believe the board of managers should have asked for when they went to the clearing association?

A Yes, I said they should have asked for some indication from the clearing association as to whether the positions of clearing association members revealed any undue concentration and whether there had been in recent period any undue concentration in the buying and selling through these clearing members.

I meant to add, and I think I didn't, that

assuming that they foun- anything that looked suspicious regarding the clearing members, it would of course be necessary to find out for whom this trading was being done.

Q Take a look at Plaintiff's Exhibits 130 and 131 for identification and look at, say, July, August; that period of time.

Is there any information reflected in those exhibits that in your view you just indicated looked suspicious from the point of view of the board of managers of the produce exchange making the inquiry you just described, in mid-summer of 1963?

MR. LIMAN: I object to the form. I take it that the question is that if an inquiry had been made and if the clearing association had given this information, is there anything that should have looked suspicious, am I correct that that is what you meant?

MR. HARRIS: Yes.

MR. LIMAN: That is not the question that was asked.

THE COURT: You have reframed the question, Mr. Liman.

MR. LIMAN: Sure. That is why I was objecting to it.

THE COURT: You have now reframed the question. I suppose you have no objection to your own question.

MR. LIMAN: I have no objection to it.

MR. HARRIS: I will adopt Mr. Liman's question.

THE WITNESS: May I hear Mr. Liman's question before I adopt it?

(Question read)

A Yes, I think that they would have ascertained facts that would have required further investigation.

First, if we turn to the bought and sold record at the clearing house for the month of July, we find that --

THE COURT: What exhibit is that?

MR. LIMAN: 131, your Honor.

A Excuse me. Bought and sold is 130, your Honor.

THE COURT: Yes, I see it.

A There we see that only three per cent of the bought and sold during the month of July was done by Ralph Peters Company. 19 per cent by Merrill Lynch; 16 per cent by Cargill; that there was a fairly heavy concentration in three clearing firms.

I should have thought that the next step would have been to try to ascertain what concentration might have been reflected in the principals buying and selling for whom these clearing members were clearing. Then if we turn to 131, the aggregate long and short positions, again as of July 31st, we find that 58 per cent of the long position was by again Ralph Peters & Company, which had done the largest amount of trading in the past month.

We find that -- I'm sorry -- we see the distribution of long positions amongst others does not appear unduly concentrated, excepting for that 58 per cent Ralph Peters.

Short position concentration as of July 31st was 37 per cent Merrill Lynch and 19 per cent R. J. Barnes, and the other figures trail off from those levels.

Again, the focus it seems to me in particular might have been on Ralph Peters & Company. He had been

the leading trader during the month and held more than half of the net long position as of July 31st.

Q Sir, do you have an opinion as to what the Board of Managers of the New York Produce Exchange should have done after they received the information that you just referred to regarding Ralph Peters and the others?

A I think maybe the first step might have been to contract Ralph Peters & Company, find out how many customers this represented, if any concentration still appeared in the principals behind this position, find out who this customer is, if it is one leading customer. And take it from there to again whether this is a hedge, whether the customer is financially sound.

Q Professor Gray, I will ask you to assume for a moment that the bulk of the contracts that Ralph Peters was clearing through the Produce Exchange Clearing Association as of the time you were just referring to were held for Allied Crude Vegetable Oil.

In your opinion, if members of the Board of Managers of the Produce Exchange during 1963 had gone to Ralph Peters as you indicated and found out that the vast majority of the contracts he was holding was for Allied Crude Vegetable Oil, do you have any opinion as to what they should have done at that juncture?

elrf 3 Gray-direct [4452]

MR. O'DONNELL: Your Honor, I object to this. This is reference to a document that is compiled by Mr. Ellison with respect to the Clearing Association, information that the Clearing Association might or might not itself have had at the time, and it seems to me that it is implicit in the question, and that is the vice in the question, the Board of Managers had this information as distinguished from the Clearing Association.

THE COURT: I thought that what we were talking about was, was information that the Clearing Association had and that Professor Gray testified that the Board of Managers could have obtained him, that is what I thought --

MR. HARRIS: Yes.

MR. O'DONNELL: That's right, your Honor, but this is information which the Clearing Association could have compiled, presumably, as Mr. Ellison did, to get daily information sheets about positions.

But for the Clearing Association, the member of the Clearing Association, in this case Ralph Peters, was the one that I understand the witness to be saying the Clearing Association could have done something about.

But to make the next step the Board of Managers of the Produce Exchange could have done something with

Ralph Peters, seems to me not to follow.

THE COURT: I suppose at this point I am a little confused. I had assumed that the question being raised now was that information which was available to the Clearing Association, and information which the Board of Managers of the New York Produce Exchange might have been obtained, and Professor Gray says in his judgment in August that they were under an obligation to make that inquiry, it was available to them. That is where I thought we were.

MR. HARRIS: Yes.

THE COURT: Where are we now?

MR. HARRIS: Then he stated that they had made the inquiry they would have learned that Ralph Peters held 58 per cent of the long position, in his view they should have gone to Ralph Peters and asked who he was holding the position for.

What I am establishing now is that if he had done that, and Ralph Peters was a member of the Produce Exchange, so there is no dispute about that, they would have found out that the position was being held for Allied Crude.

My question now is, what in his view should they have done at that point?

MR. O'DONNELL: The dispute is not about the fact that Ralph Peters was a member of the Produce Exchange as well as the Clearing Association, but that the Produce Exchange didn't have this information and it would be up to the Clearing Association to decide whether something should or should not be done about it.

THE COURT: I understand that, but the burden of Professor Gray's intention in regard to his opinion evidence at the present time is that there came a point when in his judgment the Board of Managers should have gone to the Clearing Association, and he is assuming that having asked that the Clearing Association would have given them the information.

MR. O'DONNELL: Yes, your Honor.

THE COURT: And therefore obviously based on an assumption that they would have given them the information, he is going to the next step.

MR. O'DONNELL: But it is circular because he starts with a document prepared by Mr. Ellison that gives the information he says the Board should have--should have stirred the Board of Managers into action.

THE COURT: I understand that. But it seems to me thatnow -- at least what you are exposed to, Mr. O'Donnell, is the Professor's reasoning, and it

seems to me that that is what the whole purpose of it is. You are exposed to it and he is going to be here for a day or two, and you are going to be able to deal with him.

MR. O'DONNELL: Thank you.

Q I believe the question that was pending, Professor Gray, is do you have an opinion of what the Board of Managers should have done when they learned from Ralph Peters that he was holding the position substantially for Allied Crude -- if they had been told.

THE COURT: Let me be sure. I want to be sure that the jury understands where we are. If I misstate where you are going, Professor Gray, be sure and let me know.

Professor Gray is testifying at a certain point certain conditions were present which he indicates should have alerted -- I think he said it was in August -- should have alerted the Board of Managers to secure information from the Clearing Association, and based on the assumption that the Clearing Association would have at that point been alerted that something was wrong, that the Clearing Association would then have given them this information. That is where we are proceeding.

All right.

A I think I remember the question. My answer to the question is that at that point having learned that Ralph Peters' position of some 58 per cent of the long at open interest, that they would have found in the clearing house that that was being held for Allied

Crude.

The next step is to ascertain factors which I have previously adduced with regard to Allied Crude; namely, is this a hedge position and what is the evidence that it is, and is this principal financially sound?

Q When you refer to evidence, sir, can you elaborate on what you are referring to?

A As regards the hedge position?

Q Yes, sir.

A You would want to see the documentation of the sales contracts, cash sales, cash forward sales contracts, which this hedge is held against. Depending upon the degree with which you are satisfied or not satisfied with any documentation presented to you by Allied Crude, you might very well, probably would, in case of a position of this size want to confirm that with the buyer from Allied Crude, do you, in fact, have this contract with them.

THE COURT: You have moved from members of the Exchange and members of the Clearing Association to Allied Crude which was a member of neither.

THE WITNESS: Yes, your Honor. In the event of lack of cooperation on the part of a non-member in a matter such as this, I suppose first your

suspicions would be further exacerbated, and at that time you would ask your clearing member, who is also a member of the Exchange, to begin the process of liquidating the position of this non-member.

THE COURT: All right.

MR. LIMAN: Your Honor, I'm sorry. I was taking notes and I didn't get the preface before you asked the clearing member to beign liquidating.

THE COURT: Cooperation. I think that is what you said.

THE WITNESS: Yes, your Honor.

THE COURT: All right.

Q Professor Gray, during 1963 the New York Produce Exchange had a full time managing director by the name of Berg.

Do you have any understanding or knowledge as to what his job was and should have been during 1963 in connection with --

MR. LIMAN: Is this an area for expert testimony? Has this man ever served on the Board?

THE COURT: Mr. Harris, it seems to me, one, I don't think the Professor -- at least he hasn't been called here to testify in that way as far as I understand it.

Secondly, it seems to me that you are extending things far beyond what is before us.

MR. HARRIS: I will go on to something else, your Honor.

Q Professor Gray, in your testimony this morning with regard to the transactions involving the warehouse receipt ex-pit transactions involving Allied and Continental Grain and also Allied and Bunge Corporation which you have the folders there in front of you, you had reference to exorbitant interest rates.

Have you done any calculations or supervised any calculations of interest rates in connection with those transactions, sir?

A Yes, I have.

Q Are those calculations reflected on Plaintiff's Exhibits 255 and 260 for identification?

A I believe they are.

MR. LIMAN: Is there going to be an offer of these documents?

MR. HARRIS: Yes.

MR. LIMAN: I would object to his reading from them until your Honor rules, until I have my voir dire on them.

THE COURT: What documents are they?

MR. HARRIS: Plaintiff's Exhibits 255 and 260 for identification, your Honor.

I thought we had provided you with a copy.

THE COURT: I have a copy.

Are these documents that have been drafted by you from 260 and so on?

MR. HARRIS: These were documents prepared by Mr. Ellison actually, your Honor, based on the files that we have put into evidence, 260-A through F and 255 A through --

THE COURT: Professor Gray is going to have to testify I thought from 260-A, B, C D and E and 255-A, B, C D and E.

MR. HARRIS: Yes.

THE COURT: Or whatever it was. Anything on these charts, those documents are in evidence, aren't they?

MR. HARRIS: Yes.

THE COURT: Before he can testify about those documents, they are going to have to have voir dire.

MR. HARRIS: Yes, your Honor. I appreciate that. I was going to have him identify them and then offer them.

THE COURT: I thought you were asking him

about the rates of interest.

MR. HARRIS: That is so he can identify these are the documents that relate to that.

THE COURT: All right.

Q Were these calculations that are reflected on Exhibits 255 and 260 and were prepared by Mr. Ellison done pursuant to your supervision?

A Yes, they were.

MR. HARRIS: Since we are going to have voir dire, perhaps we ought to do them one at a time. I would like to offer Plaintiff's Exhibit 260 for identification which relates to Bunge Corporation.

MR. FRYER: May I have some voir dire, your Honor?

VOIR DIRE EXAMINATION

BY MR. FRYER:

Q Professor Gray, I direct your attention to the caption of Plaintiff's Exhibit 260 for identification. It says selected cottonseed oil registered warehouse receipt transactions and a few other things, does it not, sir?

A Yes.

Q Isn't it a fact that this document refers to all of Bunge's cottonseed oil registered warehouse

by that note.

THE WITNESS: Well, your Honor, I regret it if I intimated that we knew that every warehouse receipt transaction was accompanied by an ex-pit. Most of them were, and we have the evidence of that.

In this case, really following up further on Mr. Fryer's question to me, we really don't know, at least I to my personal knowledge don't know whether the particular transactions referred to in this footnote were done in-pit or ex-pit. We simply don't have documentation that they were ex-pit.

THE COURT: Then maybe I misunderstood. The way I had been following the testimony, I thought that the burden of your use of 268F and 255A, B, C and D was that these were ex-pit transactions and that you placed some reliance on your opinion on the fact that they were ex-pit.

THE WITNESS: That, your Honor, is indeed true.

Now, in fact had these warehouse receipts been helf off the market with an understanding that they would be returned at an agreed upon formula price, then even had you executed the futures side of this transaction in-pit, you still would have had a manipulative

effect.

But it seems to me that it is further relevant that the ex-pit transactions were done against what in my view were not real cash transactions. And relevant especially insofar as it gave some sort of signal to the exchange of what was going on that they might not otherwise have received had the transactions been done in the pit.

THE COURT: I just wanted to clarify in my own mind my understanding of the testimony.

MR. HARRIS: On Exhibit 141 for identification it's indicated that this transaction that took place on February 27 where the 696 contracts was ex-pit. The footnote refers to some of the transactions set forth on the other column which -- which were the ex-pits were the futures transactions were cancelled out.

THE COURT: As I said, I just assumed that everything that Professor Gray was talking about was related to ex-pit transactions.

All right. Let's go to the next one.

BY MR. HARRIS:

Q I'd like to now turn to Plaintiff's Exhibit 255 for identification. That is a similar chart

involving Continental Grain Company, sir.

A Yes.

MR. HARRIS: I offer Exhibit 255 for identification, your Honor.

VOIR DIRE EXAMINATION

BY MR. LIMAN:

Q Professor Gray, I take it that because you testified in this Bunge-Manufacturers case you have studied Bunge's transactions more closely and over a longer period of time than Continental's?

A Certainly over a longer period of time. Probably more closely in that I studied Bunge's transactions twice.

Q Looking at 255, can you tell me when the first time you saw Ehxibit 255 for identifidation?

A I saw this in handwritten form probably a month ago, though frankly I have forgotten when the last time was that I worked with Mr. Ellison. It would have been approximately a month ago.

Q In New York?

A Yes.

Q Did you have some records that you checked it against then?

A I had looked at the documentation prior to

that time, that Mr. Ellison had shown me regarding the underlying transactions. And at the time that he saw this, I think that I did not go back and check it against those documents.

Q You have some footnotes here. Who is the "we" inthose footnotes?

A Really Mr. Ellison.

Q It's not you?

A Right.

Mr. Ellison reports to me that he searches and has not been furnished with calculation sheets, etc., available by Bunge.

Q Did you intend to suggest in that footnote that there were such calculation sheets that ever existed?

A I didn't intend to suggest that, no, sir.

Q Am I correct, therefore, that that whole last column that says allocation based on Bunge formula is predicated on the assumption that a Bunge formula was used by Continental Grain Company?

Predicated on my assumption, it's fair to say, sir, that a similar formula was used, and I wanted to see how application of the Bunge formula would apply to the results of the Continental

transactions so you were the one who suggested based on this assumption of yours that a similar formula was used, that there had been this column?

A I'm not sure that I suggested this particular column. I do know that I suggested that we apply the results of the Continental transactions to the Bunge formula to see if the Bunge formula explained them in detail or closely, yes.

Q I will ask you to look at this blackboard. Do you see it?

A Yes, I can.

MR.MINNEROP: Your Honor, we haven't been given copies of these exhibits at all. I assume that means we shouldn't be interested in them. May I ask for copies, because I'd like to follow as a matter of academic curiosity.

(Pause)

Q Professor Gray, am I correct that in making these computations as to total indicated profits, you have made an assumption with respect to the Continental Grain transactions that at the time that they bought warehouse receipts from Allied, that it was known at what price they would resell those warehouse receipts to Allied?

commissions and other charges.

Q That would be $54 per receipt. And when you say exclusive of it, that if the oil was selling at 12 cents a pound, Continental would be paying out $7200 per contract, and that its profit after its carrying charges on that transaction, would be $54; you don't need all these elaborate transactions -- elaborate calculations to compute that, do you?

A If the built in 9 point figure is referred to as profit, that would be correct. I am referring to this as an assured return, not as a profit with an arm's length transaction at both ends.

Q And Mr. Gittleman -- you haven't read this testimony on this stand about whether these were arm's length transactions?

A I haven't read Mr. Gittleman's testimony in that regard, no.

Q Or Mr. Stafford's?

A No.

MR. LIMAN: Your Honor, I see no basis on which this document can be offered. I object to it.

THE COURT: The objection is sustained.

MR. FRYER: Your Honor, I assume that also applies to my objection.

clr Gray-direct [4522]

THE COURT: The objection is sustained as to both.

MR. FRYER: Thank you, sir.

THE COURT: Let me be clear to you, Mr. Harris and professor, that by sustaining that objection I am not barring any analysis or depiction as the professor feels in terms of these transactions of putting before the jury in regard to what he feels they are. But because I think that his reasoning in regard to it, he has a right to present that to the jury.

MR. HARRIS: I think for the moment, your Honor, I will move on to another subject and come back.

BY MR. HARRIS:

Q Professor Gray, there's been testimony in this case prior to today that there was a speculative surge in the cottonseed oil futures market in the late summer and fall of 1963 due to rumors that the Russians were going to purchase vegetable oils, and that they were in the market for grains at that time.

In your review of the market conditions, the cottonseed oil futures market during 1963 did you find any information that would give you the basis for an opinion as to whether or not there was such a speculative surge?

were speculative sales.

THE COURT: Both?

THE WITNESS: Both cottonseed oil and soybean oil.

Q Can you just explain in a general sense how you made that determination, sir?

A Yes, first from the records of what sales were made, we ascertained those totals that we just referred to, of future sales made during that period. From internal records of Bunge that included that period, records which were referred to as the weekly fats and oils position report, I ascertained that there was no significant change in the weekly fats and oils position, which would have been reflected had there been acquisitions of cash oil against which these future sales were made.

There being no such acquisitions of cash oil, I concluded that these futures sales were speculative.

Q Have you made any determination priorto coming here today as to whether Bunge made or lost money on these speculative sales of cottonseed oil futures during this period?

A Yes --

elr Gray-direct [4509]

THE COURT: Wait a minute. I believe that the soybean oil, the reason that I think that's relevant, but I'm not sure yet in terms of the theory of sales is because of the fact that as I recall, as I understand it, because of the relationship, historical relationship between soybean oil price and cottonseed oil, when the settlement of the final settlement price was made it was set at the -- the spread was kept, which meant, as I understand the testimony, that it therefore was set at a price which was below the 25 point level which had been established.

All I am concerned with, I don't believe that under those circumstances -- this is my understanding -- that when they made a profit in speculating in soybean oil has anything to do with this case. The issue is the price of soybean oil, and therefore whether they knew what the price was, etc., which may or may not be relevant.

The point is that it's the relationship between the price of soybean oil which the managers kept that relationship and settled the price, which determines what these people did or did not make in cottonseed oil, whether or not they profited or didn't profit during that period of time.

MR. HARRIS: It also relates to use of inside informationthat was obtained on or about November 14.

THE COURT: But it doesn't have anything to do with what they did in Chicago.

MR. HARRIS: Yes, your Honor, we submit it does.

THE COURT: It has nothing to do with what they did in Chicago other than what the price of soybean oil was. Not what they made in regard to that. I'm not going to allow it.

MR. HARRIS: May I approach the bench, your Honor? This is very important to our case, and I think I can clear itup in one second, your Honor.

THE COURT: You can approach the bench on it at 5 o'clock.

Insofar as this is concerned, you can ask him about profit on the price of soybean oil, and on anything that set the profit. At 5 o'clock if you will enlighten me, maybe I will change my mind. But I do not set it at the present time. I have difficulty seeing it.

MR. HARRIS: Very well, your Honor.

Q Professor Gray, in adhering to the Court's

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THE COURT: I think you can step down, Professor Gray.

(Witness steps down.)

MR. HARRIS: Your Honor, let me address myself first to the point of soybean oil futures sales by Bunge Corporation during that last week. It is the plaintiff's contention in this case, your Honor, that Bunge Corporation knew on November 14th information concerning Mr. DeAngelis' future position which Mr. Klein learned in his capacity as a member of the Board of Managers at the New York Produce Exchange and that one of the reasons why Mr. Klein at least did not see fit to take any steps to close the cottonseed oil futures market on that day was that he transmitted this information to his company and that they profited by trading very heavily in a pseculative way by selling short futures contracts during the period of time that the market started to fall, and made money as the market fell.

Very simply, your Honor, everybody knew and that is why they set the settlement price based on -- that is what the testimony shows, based on the soybean oil price is that these are parallel markets and they tend to go up and down in about the same pattern.

We think it is highly probative of Mr. Klein's

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attitude and Bunge Corporation's profiting by use of inside information not only that they went short in cottonseed oil futures, but that they went short in soybean oil futures as well.

THE COURT: What I don't gather is, you are suing as Trustee of Haupt. You are not bring here any damage that he had from trading on the Chicago market.

MR. HARRIS: I agree. We are not claiming to recover dollars based on the dollars that Bunge made in Chicago but that goes for motive -- this goes to Mr. Klein and Bunge Corporation's motive in not closing the cottonseed oil market in November 14, 1963, and in fact they went out and sold more in soybean oil so they made even more money out there.

I think if you take it all together, instead of $500,000, you are up in the millions.

THE COURT: That is one of the problems I have about this case. Because of the fact that you -- it seems to me that it is appropriate for you, and at least I think you can make a respectable contention that these people knew that soybean oil was going to fall, that there was -- because of his position and knowing this and that they had an open position on this market that they didn't settle out because of the fact that they

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were going to get margin and they would make a profit.

But you can't take a profit that they made in some other commodity and therefore present that to the jury with regard to anything. You may indicate the fact that they had -- that they may have the knowledge that it was going to fall as soybean oil in relationship as a basis for their doing what they did on the New York Produce Exchange.

That, I think, is a respectable argument. But the rest, no. There is no basis for it and I'm not going to allow it in.

If that is your basis for it, then the answer is that it will be excluded. If you have no better basis than that, then my ruling stands.

Where else are we?

MR. HARRIS: The only other point is about Mr. Gittleman's testimony, your Honor. I, during the course of the afternoon, located Mr. Gittleman's trial testimony in this case.

THE COURT: What did he say?

MR. HARRIS: This relates, as I said, and that is why I switched over to Bunge Corporation --

THE COURT: What did he say?

MR. HARRIS: This is referring to the meeting

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MR. FRYER: If soybean oil is out, I won't go into soybean oil.

THE COURT: In terms of profit, soybean oil is out. The only reason that soybean oil is in, as I have tried to explain before, and I think that is also valid, but not whether you made any money in Chicago. We are involved with the New York Produce Exchange.

MR. HARRIS: The reason I raise that, your Honor, is because if Mr. Fryer is going to go into how they liquidated Mr. DeAngelis' soybean oil position in Chicago --

MR. FRYER: I won't.

MR. LIMAN: I take it you are not intending to go into the same material with Continental, because if you are --

MR. HARRIS: Yes, I was going to raise that as another point. Not with Professor Gray, but we do have and Mr. Liman knows, a chart indicating Continental cottonseed oil position and the variation margin payment it received in the last week.

MR. LIMAN: May I speak to that? There are two problems that I think my friend Mr. Harris has. It is quite clear that Mr. Vogel was not at the meeting on the 14th and no event between the 14th and the evening

DIRECT EXAMINATION

BY MR. HARRIS (Continued)

Q Professor Gray, I have placed before you Plaintiff's Exhibits 255-A through D in evidence and 268-A through F in evidence; 260-A through F in evidence, which we referred to yesterday.

With regard to the registered warehouse receipt transactions which we discussed yesterday involving Bunge Corporation and Allied Crude Vegetable Oil, have you made a calculation as to how much Bunge received as a return on its investment in those transactions?

A Yes, I have.

Q Could you take an example of one of the transactions and explain what the calculation is, what result you achieved?

A If I may, I would explain first certain assumptions which underlie the transaction. I am assuming from general knowledge of the interest rate market at that time in 1963, and general practices of banks lending to commercial firms against warehouse, registered warehouse receipts, as collateral, I have made two assumptions which I hasten to add I do not know from the record apply directly in these exact numbers to Bunge and Continental.

These assumptions are that against registered warehouse receipts a commercial firm in good standing with a large line of credit from a major bank could have borrowed against registered warehouse receipts as collateral at a half point above the prime rate at the time 90 per cent of the value of the registered warehouse receipts.

Either of these numbers, a half point above the prime rate or the 90 per cent might not have applied, I think as an order of magnitude they would have applied to the defendants in this case, Bunge and Continental; may not have applied with precision. I don't know on what terms they could borrow. On that assumption, I have looked at a typical transaction between each of these firms and Allied Crude, and without raising again the question of whether the return should be viewed as a profit, your Honor, or as an interest rate or return on investment or whatever, I have asked the accountants to compute, last evening, from two of these transactions the annualized rate of return to these firms on these given assumptions.

The transaction selected,both of them were -- each of them was for 600 warehouse receipts, a 600 warehouse receipt transaction with Continental Grain

Company and a 600 warehouse receipt transaction with Bunge Corporation, and since the annualized rate of return on these transactions would be influenced, was influenced by the period of time over which the warehouse receipts were held by the defendant firms, I have chosen these two transactions at times periods which do not inflate the results.

The shorter the time period over which the warehouse receipt was held, then the larger the annualized rate of return would be from the nine point profit which was a fixed element.

So I have chosen in the case of Continental Grain Company, a 600 warehouse receipt transaction which was held for 28 days, and in the case of the Bunge Corporation, a warehouse receipt which was held for 30 days.

The transaction for Continental Grain Company entailed the following numbers:

A total indicated return to Continental Grain for holding the warehouse receipt for 28 days, of, $69,840.

MR. LIMAN: Did you say the warehouse receipt or receipts?

THE WITNESS: Receipts. 600 warehouse receipts.

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Excuse me, sir. On the assumptions I made earlier regarding interest costs, I have assumed that Continental Grain borrowed from its bankers 90 per cent of the value of these warehouse receipts at an interest rate of four and a half per cent.

The prime rate at the time, sir, was four per cent. I am doing this at four and a half. As I have indicated, I do not know the facts of the rate at which Continental Grain borrowed on these warehouse receipts. Changing the 90 per cent number, changing the four and a half period of time number, either one would have some influence on these results, would probably not significantly effect the order of magnitude of the results.

The 600 warehouse receipts were purchased to total price of $4,370,200. If we compute first the interest that Continental would have paid under my assumptions, four and a half per cent on 90 per cent of that value for 28 days, then Continental Grain would have paid to its banker $14,396 in interest for that money.

The second assumption I have made -- this I guess is the third -- this is an additional assumption, that on the balance of the 10 per cent of Continental's money that it puts into this transaction which results

from from the assumption that Continental Grain borrowed 90 per cent of the value of these warehouse receipts, then Continental Grain put up $457,020 of its own money, which is 10 per cent of the four million five hundred fifty seven figure, and I have assumed that the interest cost to Continental of that money was six per cent; that it needed to charge itself six per cent interest on that $457,000 for 28 days.

The basis for that assumption was information supplied to me only by Mr. Gittleman that the interest factor in the Contnental Grain transaction was six per cent. That is what they charged Allied.

So I am assuming that is the opportunity cost at that time to Continental Grain Company of its own money.

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So if we take six per cent of the $457,000 for 28 days, there is an additional interest cost to Continental of $2,133.

I add that to the interest cost previously computed on the money that it borrowed from the bank of $14,396 and I obtain a total interest cost to Continental of $16,529.

I deduct that interest cost of $16,529 from the indicated return Continental received for holding the warehouse receipt of $69,840, and that indicated return, incidentally, was free of carrying charges because that is adjusted for the storage charges on these -- on the oil behind these warehouse receipts.

Deducting the $16,529 from $69,840, Continental's return was $53,311.

That return of $53,311 over a 28 day period on $457,000 of Continental's money amounts to an annualized rate of return of 150 per cent.

MR. LIMAN: Am I understanding, your Honor, that it is his testimony that he took the $53,000, assumed that Continental had borrowed and just simply instead of taking a percentage of the $4,570,000 which Continental had laid out, he took a percentage of an amount that he says that Continental didn't borrow?

If that is the basis of his testimony, I move that it be stricken on the ground that there is no evidence here that Continental Grain borrowed 90 per cent, 50 per cent or 10 per cent of this and that his percentage of whatever he is taking, 50 or 60 thousand, should be a percentage of the total amount that Continental laid out.

THE COURT: The objection is overruled.

Mr. Liman, I think that Professor Gray has indicated what his assumptions were.

MR. LIMAN: They are not grounded in the record.

MR. HARRIS: I think there is a mischaracterization in the record.

THE COURT: Please.

He has indicated what his assumptions were, and I think that you will be entitled on cross examination to deal with that.

Let's proceed.

A The second illustration is for one transaction of the Bunge Corporation with Allied, again selected on the same assumptions -- on the same criteria.

First, it is a 600 contract transaction, exactly the same size, approximately the same time

period; in this case, 30 days.

The total indicated return to Bunge in this transaction was $53,160. The interest cost to Bunge calculated on the same assumptions that it borrowed from its bank 90 per cent of the value of these warehouse receipts at four and a half per cent interest for 30 days was $15,418, and then the imputed interest cost to Bunge for its remaining 10 per cent that it did not borrow from the bank was calculated at five and a half per cent because the record shows that Bunge charged as an interest factor with Allied Crude five and a half per cent.

That is a different fact from the six per cent we used for Continental Grain. We take the interest cost of Bunge at five and a half per cent on the $456,000.

I neglected to mention that the total number here on 600 contracts is different because the price was different. So that instead of the $457,000 -- I'm sorry -- instead of the $4,570,000 that was the price of the warehouse receipts in the Continental transaction, it is very close in the case of the Bunge transaction, $4,568,000.

The interest cost and that then, the 90

per cent of that, is $15,418, and the five and a half per cent interest cost on the remaining 10 per cent of that for 30 days was $2,094.

So the total interest cost to Bunge, $17,512.

Deducting that total interest cost of $17,512 from the total indicated return after storage charges of $53,160, the total net return to Bunge would have been $35,648.

Applying that $35,648 to the $456,840 of their money, which I am assuming was involved in this transaction, an annualized rate of return, was 94 per cent.

Q Professor Gray, would this analysis apply to all of the other transactions contained in the folders before you?

A In --

MR. LIMAN: Objection to the form. If he means every one of the transactions by making these assumptions, obviously the answer is self-evident. If his testimony is that the same figures are produced, then let him say it.

THE COURT: All right.

MR. LIMAN: I object again, your Honor, to what I consider is Mickey Mouse playing of figures.

MR. HARRIS: I object to Mr. Liman's speeches.

THE COURT: The objection is sustained.

Q Based on this analysis that you have just given us, Professor, can you tell us approximately how much Bunge Corporation received as a rate of return on its investment in all of the transactions reflected in Plaintiff's Exhibit 260-A through F, the total?

A I am afraid that I can't really tell you approximately how much other than to reiterate the basis upon which these two examples were selected.

I did endeavor to select typical examples in which the rates of return would not have been inflated by short holding periods. But not having had time to repeat this calculation for the other transactions, I can't estimate a percentage rate of return.

Q Are there transactions set forth in Exhibits 460-A through F where the warehouse receipts were held for a shorter period of time than you used in your example?

A Yes.

Q Professor Gray, I believe you testified yesterday that in your opinion these rates of return should be characterized as interest.

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Can you tell us the basis for your opinion in that regard?

A Well, the basis for my opinion characterizing them as interest was that the return was assured at least to the extent that we find evidence in this case that the transactions were prearranged.

It has been my judgment of the evidence that I have seen --

MR. LIMAN: Objection, your Honor, to his giving testimony as to what his judgment is of the evidence that he has seen.

I think your Honor has said he can give his premises if they are founded in the record or we can challenge them on that.

THE COURT: All right. I think that is correct. So let's start again, Professor.

A (Continuing) If the transactions were prearranged and given the fact that the warehouse receipts that were held by Bunge and Continental were hedged in futures which placed any risk of default in the lap of the clearing house rather than Allied Crude, then these would be risk-free.

My interpretation of profits in a transaction just as an economist -- my interpretation is

that profits arise from undertaking risk, and to the extent that these were risk-free transactions, and to the extent this was an assured return, then it seemed to me that it was more approproate to characterize this as interest.

Q Sir, have you been able to determine how much it cost Allied Crude to enter into these transactions with Bunge and Continental?

A I have known that number, and I don't know, counsel, whether I have it in front of me or not.

Are you speaking of the two transactions or the total?

Q The total transactions that we discussed yesterday.

MR. LIMAN: Each of these transactions, your Honor?

MR. HARRIS: I'll take them one at a time.

Q What it cost Allied to enter into transactions?

A With Bunge and Continental?

Q Take Bunge first and do the total of transactions A, B, C, D, E and F as set forth in the folders 260A through F in evidence.

A Okay.

In the case of the Bunge Corporation --

MR. LIMAN: Is he reading from something, your Honor? Can we have it marked for identification?

MR. HARRIS: It is marked for identification.

THE WITNESS: I'm sorry, sir. This is

Plaintiff's 260 for identification.

MR. LIMAN: Is that the Ellison chart?

THE WITNESS: This was prepared by Mr. Ellison, yes.

MR. LIMAN: I object, your Honor.

THE COURT: Objection sustained.

I think I told you thatthis morning.

MR. HARRIS: It's just the total, your Honor. He can't have it in his head. He's referring to something that's been calculated.

THE COURT: Calculation of what?

MR. HARRIS: How much it cost Allied to enter into these transactions.

THE COURT: He can't testify from a document that's not admissible.

MR. HARRIS: He said he calculated it and he's just using that as a reference point as to what the number is.

THE COURT: I think what he ought to do is calculate as an example, the cost to Allied of the two transactions as being typical.

MR. HARRIS: Okay.

Q Professor Gray, taking the two examples you just went through before, the 600 warehouse receipts with

Bunge first and then the 600 warehouse receipts with Continental, can you tell us what the cost was to Allied of entering into those transactions?

A Well, the cost to Allied in the case of the Bunge transaction was the same as the total indicated profit to Bunge, $53,160, and the cost to Allied in the case of the Continental Grain transaction was the same as the total indicated return to Continental, $69,840.

Q Based on the amount of money Allied Crude received in these two transactions and based on what it cost Allied Crude to engage in these two transactions, do you have an opinion as to whether this was an unusually high or low expense for Allied Crude?

A My opinion, it's unusually high.

Q Can you tell us the basis of that opinion, sir?

A Well, the basis for that opinion is reflected in my earlier assumption that a commrecial firm with good credit standing and a good line of credit with a major bank could have borrowed money against 90 per cent of the value of these warehouse receipts at a much lower rate.

The reflection we find in that is the fact

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that Allied Crude quite evidently was not a firm with a good credit standing, meant that it had to pay a considerably higher rate to have these warehouse receipts held.

MR.HARRIS: I have no further questions, your Honor.

MR. O'DONNELL: May I proceed, your Honor?

THE COURT: I just didn't know who was going first.

MR. LIMAN: We chose straws.

THE COURT: Oh, I see.

MR. O'DONNELL: I was the staw apparently.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. O'DONNELL:

Q Mr. Gray, my name is O'Donnell and I am the attorney in these proceedings for the New York Produce Exchange, Donald MacDonald, president of the New York Produce Exchange in 1963, Sidney Fashena, treasurer of the New York Produce Exchange in 1963 and his firm, a member of the produce exchange called I. Usiskin & Company, all of whom are defendants in this action. Those are the people that I represent.

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Do you understand that?

A Yes.

Q I would like first to congratulate you, Mr. Gray. You have testified in these proceedings this morning thus far, all day yesterday and since 4:15 of the day before on direct examination .

These times are approximately right, are they not?

A I think so, yes.

Q And not once in your entire testimony to date have you mentioned the name Ira Haupt & Company.

Do you agree with me that you have not from that stand once used the words Ira Haupt in your testimony to date?

MR. HARRIS: I object, your Honor.

THE COURT: The objection is overruled.

MR. HARRIS: Your Honor --

THE COURT: The objection is overruled.

I want to be sure the ground rules are clear.

Professor Gray is an expert on the stand and as far as cross-examination is concerned there are going to be no holds barred.

MR. HARRIS: I wasn't objecting to the

MR. O'DONNELL: I will do that, your Honor, gladly on a reciprocal basis if the witness will do the same thing in answering my questions.

THE COURT: All right.

Q Am I right that you have not from that stand thus far up until this very second ever referred to Ira Haupt & Company in your testimony?

A I think that you are right.

Q Is there some reason for that? Did Plaintiff's counsel tell you not to mention Ira Haupt & Company?

A He did not.

Q Just no occasion to mention Ira Haupt & Company in anything you have said in your analysis for the plaintiff's attorney, is that right?

A Evidently not.

Q With respect to Ira Haupt do you happen to know whether Ira Haupt & Company engaged in any ex-pit transactions on the New York Produce Exchange in 1963?

A To my recollection, they engaged in a large number of ex-pit transactions.

Q In fact, Ira Haupt & Company engaged in more ex-pit transactions, to your knowledge, did they not, than either Bunge, Continental Grain or Merrill Lynch?

A That is probably true.

Q It's probably also true and it is also true that they engaged in more ex-pit transactions in 1963 than all three of them combined, isn't it?

A Probably.

Q Mr. Gray, did you ever state that the Allied case has been interpreted in various quarters as pointing up a need for better regulation and better organization of the commodity trade, the particular reference to futures markets; it is somewhat ironical that the best organized and regulated part of the commodity trade which is central to its entire structure -- strike that.

Let me begin again. Did you ever state as follows:

It is now clear that the bankruptcy of Allied was not an outgrowth of its dealings in commodity futures markets as such, nor were the machinations which led to bankruptcy facilitated by any of the rules, regulations or practices that are peculiar to the commodity markets?

A I can't recall. If I could see the document from which you are reading, it might refresh my recollection. I do not recall having made that

whether it is proper testimony at that time.

MR. LIMAN: Could we at least have notice, I mean, nobody has ever suggested to Mr. Harris from the defense side who he should call or not call. Except we are entitled to know who he is calling.

THE COURT: Before we start, before lunch since I have this time, I just want to tell everyone, counsel, that I said that no holds were barred, and you are free to draw blood intellectually, but no violence.

Q That is what the term means to you, doesn't it?

A Yes.

Q Manipulation doesn't consist of increased volume of trading by itself, does it?

A No.

Q Increases in open interest is not embraced within the concept of price manipulation, is it?

A Certainly not necessarily,no.

Q With respect to increase in volume of deliveries, that certainly doesn't necessarily involve any price manipulation, does it?

A No, not necessarily.

Q Volume of ex-pits or ex-pit transactions themselves do not necessarily involve any manipulation of any kind, do they?

A No.

Q Each of those factors that I have just covered with you are readily explainable in many instances on the basis of ordinary commercial transactions not involving manipulation; are they not?

A Yes.

Q Have you ever seen any publication or any study of any kind, to your knowledge, Mr. Gray, that

would have hurt the traders on the opposite side of the Haupt, Allied situation; is that not right?

A Certainly to the extent that they were speulative traders. If they were hedge traders and the futures prices and cash prices both were affected similarly, then it would not necessarily have hurt the hedge traders.

Q But to the extent that they were speculative traders or not completely coveredby true hedge positions, people on the opposite side of the Haupt, Allied long position would be hurt by the manipulation, not Allied or Haupt?

A Yes. To the extent that prices rose, the shorts would be hurt; to the extent that prices were supported and didn't decline, the shorts would be deprived of profit opportunity.

Q With respect to the subject of this manipulation of prices it's correct, is it not, that to have a manipulation, in your view, there must first of all be an intent to manipulate?

A Yes.

Q And then there must be a demonstration that the resulting price is not justified by supply and demand conditions; isn't that right?

A To have an effective manipulation, that would be right. The intent in itself would not necessarily lead to that. For it to be effective, yes.

Q And then you believe, do you not, that somebody who is charged wiht manipulation should be given a right to defend his position?

A Yes.

Q What do you mean by that?

A I mean --

Q What do you mean by defending your position?

A Well, quite generally, sir, a man charged with violating any law Ithink should be given the right to defend his position.

Q In the summer and fall of 1963 while you were out there at Stanford, did you follow the trading on the New York Produce Exchange in cottonseed oil futures?

A No.

Q You certainly didn't observe any manipulation of prices at that time on that exchange,did you?

A No.

Q You never reported any manipulation to anybody at any time on that subject, did you?

A No.

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Q If there are trades on he New York Produce Exchange or any other exchange at the close of a market, all that means is that there is somebody who is buying a contract at the close and somebody who is selling a contract at the close; is that not right? It takes two to have a transaction?

A Ir you are asking me to answer this as a purely mechanical proposition, trades at the close, yes, mean buying and selling.

Q When there are trades at the close, that is not necessarily a sign of any manipulation of the market, is it?

A No, not necessarily.

Q There are trades at the close on both the buy side and the sell side on all commodity exchanges at all times?

A Yes.

Q With reference to this subject of prices set by supply and demand, the fact is, is it not, and would you agree with this proposition, that prices really reflect trader's judgment, so that they reflect trader's judgment with respect to what the price should be based on supply and demand?

A Yes.

Q And an artificial or an arbitrary price, on the other hand, would be one that was not responsive to the trader's judgment on supply and demand, but instead deliberately influenced by the trader's actions either on or off the marketplace in some economical fashion, is that right?

A Yes, I agree with that.

testimony to differentiate between rumors and evidence of increased export sales.

I said that, so far as I knew, there was no evidence of any increase in export sales. Of course, I didn't say there were no rumors.

Q When you use the word, "rumores," perhaps another word would be information.

Are you aware that there was a publication of the U. S. Department of Agriculture published five times a year by the Department of Agriculture called Fats and Oils Situation?

A Yes.

Q Do you know that as of November 1963 the U.S. Department of Agriculture issued a publication stating--Fats and Oils Situation it is called -- "that the general level of U. S. fats and oils prices advanced about 15 per cent from mid-September 1963 through early November spurred by Russian wheat purchases from Canada and speculation that the Soviets and other Eastern Block countries may enter the U. S. market for fats and oils"?

A I was aware that that statement had been made in that issue of the Fats and Oils Situation, yes.

Q It was made in earlier issues of that same publication also; was it not?

A Not exactly that same statement, but there were references to that anticipation.

Q Do you recall that that Fats and Oils publication by the Department of Agriculture stated -- this is the one in November 1963 -- "that present export prospects for edible fats and oils, including the oil equivalent of soybeans, indicates that the 1963, 1964 total may set a record of around 4.9 billion pounds, roughly 15 per cent more than the 4.3 billion shipped abroad in 1962, '63"?

A Yes, I was aware of that statement.

Q Do you recall that it also stated, "An export volume of this size would comprise approximately a third of the 1963, '64 U. S. output of those commodities"?

A I have read that. I may not be recalling each and every sentence now that was in it. I recall having read that. So I was aware of it.

Q "That the actual exports for 1964 were some three times higher than they were for 1963 through January 1964."?

A I had been generally aware that they were substantially higher. I didn't remember the figures.

Q You have no basis on which to disagree with any of those projections as they existed at that time,

A As a percent of total transactions.

Q Right. And there are many legitimate commercial reasons for taking delivery on an exchange of a commodity, are there not?

A Well, there are certainly many legitimate commercial reasons for taking delivery, though this is rarely the intent of commercial users, and it's not that prominent an outcome of the initiation of a futures contract. It does occur.

Q I'd like now to direct your attention, Mr. Gray, to the subject of the ex-pit transactions. You told me that you were familiar with the fact that Ira Haupt had sent the New York Produce Exchange ex-pit letters in 1963 and engaged in more ex-pit transactions than these three defendants here combined; do you recall that?

A Yes.

Q You have said that the exchange was called upon to investigate the underlying documentation with respect to these transactions, is that right?

A Yes.

Q You don't know that hte exchangedidn't do that, do you?

A I have seen no evidence that they did or that

transfer of physicals, the cash oil, the warehouse receipts, for some future contracts?

MR. HARRIS: Your Honor, may I ask for a clarification of that question? Is he referring to the documentation underlying it that was submitted to the produce exchange, namely these letters, or is he talking about if Mr. Berg went out and looked at the old contract and warehouse receipts --

MR. O'DONNELL: The latter.

THE COURT: All right.

A May I have the question repeated, please?

Q I will state it again. With respect to the documentation on the rule 6B ex-pit transactions that Haupt engagyd in, whoever it engaged in the transactions with, if Mr. Berg at the produce exchange looked at the underlying documentation, that documentation would show, would it not, that there was a sale of the warehouse receipts and purchase of futures contracts?

A Assuming there is documentation accompanying the letter and he saw the documentation.

Q Yes. Or assuming he went to the Haupt or whatever he had to go and saw the documentation?

A There he would see documents such as we have in evidence here thatreported to be the purchase

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and sale contract of warehouse receipts.

(Continued on next page)

Q And that is all he would see?

A That is all he could see.

Q He certainly couldn't see this round trip you have been talking about, could he?

A If he saw the transaction that occurred -- if he saw the documentation together with the ex-pits of the transaction that occurred, for example, when Allied first sold warehouse receipts to Bunge, and then saw generally a documentation and the ex-pits when Bunge "sold" the warehouse receipts back to Allied, then he would have seen the round trip.

Q He would see the round trip if he went and looked at first one transaction for 245 warehouse receipts in that example that you had before, and then if he later went and saw another ex-pit transaction for some 600-odd warehouse receipts, of which the 245 supposedly were a part, and he could make all of this deduction and find that there was a round trip, could he?

MR. HARRIS: Your Honor, just for the record, that transaction involved Continental Grain and the witness was talking about Bunge, so by definition he couldn't have seen a Continental Grain transaction if he was talking about a Bunge transaction. Therefore, I object.

THE COURT: Let's change it to Bunge instead of Continental.

MR. MINNEROP: Was there an answer, your Honor?

THE COURT: There was no answer, I don't think other than the illustration.

Q In any event, Mr. Gray, you couldn't see any agreement about a round trip that you testified about here in response to Mr. Harris' questions, because there was no such agreement in writing?

A If there was no such agreement in writing, then I couldn't see such agreement.

Q Do you have any evidence of sugh agreement in writing?

A No, the closest thing that I could see representing that were formula calculations which we saw from Bunge, where in the very formula suggested behind that there is an agreement to the purchase and sale.

Q You have done some work you told us earlier with respect to Cargill, Inc.

Do you know that Cargill, Inc. in 1963 sent letters to the New York Produce Exchange regarding ex-pit transactions?

A I didn't know that they sent letters,

A The only thing that I presently know that would perhaps be responsive to that question is that it is my belief that the CEA requested the rule amendment which the Produce Exchange adopted in the fall of 1962 regarding documentation of ex-pits.

Q In 1963 do you know of any complaint by the CEA at any time, early, middle or late 1963, that there was anything about the documentation of 6-B transactions that did not see them?

A I don't know of any.

Q Is it not a fact, just as in the case of deliveries, a large quantity of ex-pit transactions can be not a warning signal but a sign of strength in the market?

A Depending of course on what -- first, whether that is taken just by itself and what one means by a large quantity of ex-pit transactions. I guess if you mean such a large quantity as we saw in 1963 at the Produce Exchange, I don't know of any market which has ever had such a continuous level of ex-pits relative to total transactions as occurred in that market in that year. And I'm not sure but what, taken in and of itself, that would have caused, should have raised suspicion.

Q Taking into account the fact that the open position was what it was on November 14th, 1963, when the CEA so advised Mr. Berg of the Produce Exchange -- are you familiar with that?

A November 14, 1963?

Q Yes.

A Yes, I'm familiar with that.

Q Do you know what Mr. Berg was advised on Thursday, November 14, 1963?

A I remember that the CEA advised him of there being a serious problem, but if you would give me the details of that it would refresh my memory.

Q My only question to you is:

Having that information on November 14, 1963, that Allied had a 90 per cent position, approximately, of the open position in the futures contracts of the open interest on the New York Produce Exchange on November 14, 1963, it was reasonable, was it not, for the New York Produce Exchange to commence an investigation of the situation based upon that information?

A Because what you had revealed here was --

Q Would you please answer my question.

A I'm trying to.

Q Was it reasonable or unreasonable to commence

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A That is correct.

Q You draw a distinction between money that it takes out of the bank in its checking account, that is what you are drawing the distinction?

A From the standpoint of its return on its own money, that is the distinction I draw.

Q If Continental chose to take the money out of its checking account for this transaction, then you'd say that Continental received a return of $53,000, it laid out $4.5 million, and you compute the return that way?

A Yes. If this were all Continental's money and none of the borrowed, the analyzed rate of return would have been 15 per cent.

Q Have you made any inquiries as to how much Continental borrowed?

A Inquiries only insofar as I did ask our counsel and our accounts if we had evidence of that, and ascertaining that we didn't have sufficient evidence of that to underline such an illustration as this, I simply made these assumptions. I don't know whether they borrowed or not. I would be surprised if they didn't.

Q You'd be surprised if they didn't?

Q And generally speaking, if he believes that the price is going to go up, he will be going in a long direction, if he thinks it is going down, he will be going in a short direction?

A Yes.

Q Am I correct, Professor Gray, that you have stated that in your view manipulation is based on three main factors, intent to manipulate -- I will go over each one -- that iscorrect?

A Yes.

Q Demonstration that the resulting price was at a level not justified by supply and demand conditions?

A Yes.

Q And that the accused be given the right to defend his position by citing the failure of those on the opposite side of the market to take necessary actions?

A Yes.

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Q Have you in 1975 made any analysis as to what price futures should have been selling at on September 1, 1963?

A As to what price they should have been selling at September 1?

Q Yes, sir.

A No.

Q On any other date?

A As to the price level it should have been selling at, I haven't endeavored to ascertain that, no.

Q You have told us that you read Professor Dahl's testimony, is that correct?

A Yes, I did.

Q You know that he's a member of the board of governors of the Minneapolis Exchange?

A Yes.

Q And you have already said that you have never sat on the board of any exchange?

A Yes.

Q Are you aware, Professor, that the price laws of the New York Produce Exchange called for an apportionment of memberships on the board of managers among the various trades?

A I think I have been aware of that, yes.

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Q I now make you my philsopher king.

If you had the power to settle contracts on that date, would you settle at a level thatyou believe to be manipulated and artificially high?

A If I had any say in such settlement and if I believed that the prices were artificially high, I would not exercise my say in favor of settling at that price, no.

Q In fact, if they were settled at a manipulated, artificially high price, that would be giving the benefit of the manipulation to the manipulator, am I correct?

A Yes.

Q Am I correct, sir, that all exchanges have price limits, or almost all do?

A Daily limit in moves?

Q Yes.

A I think they all do in the United States, yes.

Q That is an artificial restraing, is it not, on what the price might be at the end of the day?

A Yes.

Q Are you in a position to tell me at what price cottonseed oil futures would have been trading at the

close of business on November 19 if a man by the name of Anthony DeAngelis had not engaged in his activities and Ira Haupt had not acted as his broker? Can you give me a price?

A I cannot.

MR. LIMAN: May I have a moment, your Honor.

(Pause)

Q You expressed some hesitancy when Mr. O'Donnell questioned you as to whetherthe CEA had concluded that there was no manipulation. You remember, don't you, sir, thatthe CEA said --

MR. HARRIS: I am going to object to reading out of a document, your Honor.

THE COURT: The objection is going to be sustained.

Q I show you Defendants' Exhibit 107 for identification, which is an affidavit of Mr. Caldwell in another proceeding entitled in the matter of Ira Haupt & Company, a limited paernership.

Did they ever show you this document, plaintiffs?

A No.

Q And they never pointed out to you the conclusions that are set forth in paragraph 4 of that

document?

A No.

MR. LIMAN: I have no further questions.

THE COURT: All right, Mr. Fryer.

CROSS-EXAMINATION

BY MR. FRYER:

Q Professor Gray, I'd like to talk about the registered warehouse receipt transactions if I could, for a while. Do you have Plaintiff's Exhibits 260A through F? You see that, don't you? Let me see if I can get them for you.

(Pause)

(Handing).

Q I think on Friday when you were talking about Bunge's rate of return, I believe you used as an example a registered warehouse receipt transaction, the records of which are contained in Plaintiff's Exhibit 260C, is that correct?

A Yes, I believe that is correct.

Q Each one of these exhibits, A through F, does each one represent a separate set of registered warehouse receipts?

A I think so, yes.

Q And each one represents the purchase of those

registered warehouse receipts by Bunge and at various times the sale by Bunge of those registered warehouse receipts to Allied?

A Yes, I think that is correct.

Q And I think we agreed the other day that there were a total of six such registered warehouse receipt transactions involving Bunge, A through F?

A Involving Bunge and cottonseed oil, I believe that is correct, yes.

Q Looking at Plaintiff's Exhibit 260C am I correct that Bunge purchased the registered warehouse receipts involved in that transaction at one time on July 1, 1963?

A Yes, that is the date of the purchase confirmation.

Q When they came to sell those registered warehouse receipts to Allied did the sale take place on one day or at different times?

A Evidently at different times, because they were sold in different lots.

Q Can you tell us how many different lots were involved in the sale to Allied of the registered warehouse receipts referred to in Plaintiff's Exhibit 260C?

MR. HARRIS: Your Honor, we might be able to save some time if I can hand the witness some of the work papers.

A I have summarized those on other sheets.

Q All right (handing).

A I count six different lots in the repurchase by Allied.

Q During the period that Bunge held those registered warehouse receipts referred to in Plaintiff's Exhibit 260C, can you tell from what you have there whether the price in the futures market was going up or down with respect to cottonseed oil?

A I can tell, I think, in a moment.

(Pause)

A Evidently the futures prices declined between the initial sale of futures and the subsequent purchase of futures in each case.

Q Let's go back to the second transaction which is I believe reflected in Plaintiff's Exhibit 260B; and I ask you the same question: Were the futures prices going up or down during the period that Bunge held those registered warehouse receipts?

A There was a slight decline in futures prices from the sold and bought prices here.

Q Now let's go back to the first registered warehouse receipt transaction, which is referred to in Plaintiff's Exhibit 260A.

Am I correct that during the period that Bunge held those registered warehouse receipts the futures price was going up?

A Generally speaking, excepting the last transaction which went to a considerably later date before the return of the warehouse receipt, and over that entire period there was a slight decline in price, but for the other round trips there was in each case some rise in futures prices.

Q Again with respect to that first transaction, Plaintiff's Exhibit 260A, the purchase by Bunge from Allied of the registered warehouse receipts involved in that transaction took place at one time, did it not?

A Yes.

Q And am I correct that Allied repurchased those registered warehouse receipts in five different lots?

A Correct.

Q And am I also correct thatthe period of time during which Bunge held four of those lots of warehouse receipts did not exceed nine days?

A Thatis correct.

Q Am I also correct that with respect to the transaction referred to in Plaintiff's Exhibit 260D, that Bunge held the warehouse receipts involved in that transaction for a period of four days?

A .That is correct.

Q And am I also correct with respect to transaction referred to in Plaintiff's Exhibit 260E, that Bunge held those warehouse receipts for nine days?

A That is correct.

Q Am I also correct that you calculated or someone under your supervision calculated that the average period oftime that Bunge held warehouse receipts, registered warehouse receipts was 21 days?

A That is correct.

Q Bunge's first registered warehouse receipt transaction took place on February 27, 1963, right?

A Yes.

Q And the last of the six took place in the end of October, 1963?

A I show part of that last day of October and part of the first day of November, yes.

MR.LIMAN: Objection to the form. It is a misleading question and does not incorporate that there was a 25 point limit which the witness testified was an artificial constraint on price.

MR. O'DONNELL: I object to the question as incompetent to this witness. This witness is in no position based on his testimony to date, to testify what it felt on November 20, 1963.

THE COURT: I think the question is objectionable on the latter ground.

MR. HARRIS: Mr. Liman suggested that Professor Gray could be a philosopher --

THE COURT: He was giving him a hypothetical question and you have not. If you want to make it a hypothetical question, then you may do so. Plus the fact he was talking about Professor Gray's views, not somebody else's.

MR. HARRIS: I will move on, your Honor.

Q There has been a lot of questioning on your cross examination by the various defense counsel about Ira Haupt. I would like to show you Plaintiff's Exhibit 219-C for identification and see if you can tell us when Ira Haupt began to clear contracts in any substantial manner for Allied Crude..

MR. LIMAN: Objection to the form of that, "substantial manner."

THE COURT: I will have either Mr. Harris or Professor Gray tell us what they mean by substantial, when he answers the question.

A Just adopting for the sake of convenience my earlier loose definition of substantial, then, your Honor, as being 500 contracts or more, and not altogether facetiously, because the major increase that occurred in Ira Haupt's position here occurred on September 5th when there was a jump in its long position from 476 contracts, just under 600, to 3701, and prior to that time they had not ever held more than 479. Prior to August 28th they had never held as much as 100. But on September 5th was when we took 3701 contracts.

MR. LIMAN: Is he reading the same thing I am?

Q You are referring to contracts they held in the near month? Why don't we just go to the totals.

A Excuse me. I'm sorry. I was looking at near month. Total contracts on that same date, September 5th, rose from 1161 to 4873, and prior to that date had reached the level of 1000, on August 19th, and back prior to August 8th had never exceeded 42 contracts. Show again the big jump occurred on 4673 contracts on September 5th.

Q I believe Mr. Liman showed you this morning Plaintiff's Exhibit 191 for identification, which indicated that Ira Haupt engaged in the first ex-pit transaction involving Allied on September 9th.

A That is correct.

Q Those dates are subsequent to when you believe the Produce Exchange should have conducted an investigation into what was going on in 1963; isn't that correct?

A That is correct. I gave it earlier as my judgment that the investigation should have occurred not later than early in August.

Q The time Ira Haupt entered into its first ex-pit transaction involving Allied, isn't it also correct that Merrill Lynch had engaged in a number of these ex-pit transactions as broker for Bunge?

MR. LIMAN: Objection on grounds of leading.

THE COURT: All right. Mr. Harris, you certainly aren't going to be able to lead this witness. You know that.

MR. HARRIS: I was trying to save time with these documents rather than ask him to read it over. There is really no dispute about this, I don't think.

THE COURT: Apparently there is. There are objections.

MR. HARRIS: Okay, your Honor.

Q Let me rephrase it. Can you take a look at Plaintiff's Exhibit 142 for identification and can you ascertain whether or not by the time Ira Haupt engaged in its ex-pit transaction on September 9th Merrill Lynch had engaged in ex-pit transactions involving Bunge Corporation?

MR. MINNEROP: Your Honor, I don't see the relevance of this. I'm sure Merrill Lynch has been engaging in ex-pit transactions since they were created. I don't get the point.

THE COURT: The objection is overruled.

A Yes, up to and including September 3rd and beginning on February 15th Merrill Lynch had engaged in some 20 or 25 such ex-pit transactions.

Q Professor Gray, at page 4632 of the transcript of this trial you responded to one of Mr. O'Donnell's questions on Friday afternoon and stated that you would not -- you didn't recall seeing any published study that there was a price manipulation on the New York Produce Exchange during 1963.

Do you recall that testimony?

A Yes, I do.

Q Over the weekend, Professor Gray, have you

who doesn't know anything about the field.

Let's move on.

MR. HARRIS: Mr. O'Donnell raised it by asking if there was any published material --

THE COURT: I assumed and I'm going to assume that Mr. O'Donnell's question was raised as to whether or not there was any published matter in the field by authorities on the level of Professor Gray, experts in the field.

The objection is sustained.

MR. LIMAN: Can I read your book while you are asking questions?

MR. HARRIS: Sure.

Q Professor Gray, you also recall that Mr. O'Donnell stated to you at page 4632 of the transcript that price fluctuations on the Produce Exchange were greater in 1961 than they had been in 1963?

A Yes, I recall.

Q Does that have any bearing on your opinion that the futures market was manipulated during 1963?

A No, it does not. I think this manipulation was intended to and had the effect of stabilizing and supporting prices rather than causing fluctuations.

Q Mr. O'Donnell also asked you as to whetner

gwrf 7 Gray-redirect [4883]

please.

MR. HARRIS: My notes say 4641.

Q Professor Gray, Mr. O'Donnell asked you whether or not the only thing that went wrong on the Produce Exchange in 1963 was that Haupt failed to meet its varation margin calls. You disagreed with that.

What else in your view went wrong on the New York Produce Exchange during 1963, Professor Gray?

A Well, there was an ongoing manipulation of prices extending over a period of a number of weeks on the Produce Exchange in 1963. I think it is the main thing that went wrong.

Q There has been a lot of discussion, Professor Gray, both in response to questions by Mr. O'Donnell and questions by Mr. Liman about the number of warehouse receipts involved in these transactions and the overhanging on the market and the amount of visible oil in the country.

What is it about the holding of these warehouse receipts, sir, that in your judgment caused the price manipulation on the cottonseed oil futures market during 1963?

A So far as the futures market was concerned, it was the stopping of delivery and the accumulation

of warehouse receipts in this -- by this method that prevented the futures price from dropping to its natural level.

Q How did that stopping of delivery and financing of the receipts prevent futures prices from dropping to its true level?

A Well, the futures market had attracted delveries to begin with, which means -- I think Mr. Liman helped me bring out this morning or someone did that that is an attractive price to holders of warehouse receipts, and if these warehouse receipts had not been stopped promptly by Allied or on behalf of Allied, then these warehouse receipts were going to become a burden on the futures market, and until someone was willing to step in and stop these deliveries at what they considered an ecomonic price, the price would have been depressed.

Q Let's go back to '63 --

A I might add to that. I'm sorry, counsel. I might add to that, of course, this enabled Allied to maintain its long position in futures which otherwise it was not going to be able to maintain.

Q Can you elaborate on that answer a little bit, sir?

A By virtue of stopping the deliveries or

of rolling forward to later delivery months, the position that Allied had established in the futures market was maintained. Any reduction in price from the levels at which these deliveries were stopped as to that extent going to impair Allied's position and impair its margin account.

Q If instead of stopping deliveries Allied had chosen to reduce its near month position, what would have happened to the market price?

A Well, that would have created a good deal of -- well, I should not say a good deal. You didn't say reduce it by how much. If you are going to reduce your position, that creates selling pressure in the market since that was a long position and, hence, that would have had some downward influence on price.

Q Mr. O'Donnell also asked you on Friday about buying at the close. You testified at page 4642 that for every buyer at the close there had to be a seller at the close.

Does that in any way effect your view that the buying at the close was part of the manipulation that occurred during 1963?

MR. LIMAN: Objection to the form of that question, your Honor.

THE COURT: That is overruled.

A No, that doesn't effect my view.

To the extent that buying at the close was done in this instance at prices to attract sellers, whereas the sellers had not been attracted sufficiently to sell during the course of the day or there hadn't been buying offered during the course of the day, not all buying at the close is the same, and while it is mechanically true, of course, that for every buyer there has to be a seller, that buying and selling is reconciled, brought together at a price.

Q Would it be fair to say that to the extent -- speaking hypothetically now, Professor -- to the extent a person manipulates the market price higher than it otherwise ought to be, one would expect that there would always be sellers willing to sell to him at the artificially high prices?

A Yes.

Q Mr. O'Donnell also asked you, Professor Gray, a series of questions involving such factors as volume of trading in open interest and he asked you whether each of these factors could be explainable on the basis of ordinary commercial transactions in any circumstances. You indicated that, yes, they could. That's at page 4631.

Do you recall that, sir?

A Yes.

Q In your view, were the transactions that took place during 1963 in which Mr. DeAngelis was involved in cottonseed oil fugures ordinary commercial transactions?

A No, they were not.

Q Mr. O'Donnell asked you a series of questions on Friday about the steps that Mr. Berg took in calling the CEA in the summer and speaking with Mr. Stevens and

Mr. DeAngelis in September and in attending a meeting with representatives of the Clearing Association in September and in speaking to Mr. Goldfogle, who was a floor broker. In response to which you indicated that each of these steps was a reasonable step to have been taken.

Do you recall that?

A Yes.

Q In your opinion, were those steps a sufficient investigation based upon the warning signs that you testified that were observable by no later than early August 1963?

A No, they were not in my opinion sufficient investgiation. These were in each case, it seemed to me, reasonable first steps, in most instances not followed up upon. In addition to these having been reasonable first steps, there might have been other reasonable first steps even without the necessity of following up onthese.

Q Can you give us an example of some of the other reasonable first steps that could have been taken?

A It seems to me, for example, that speaking to Goldfogle, a floor broker, while it was a

reasonable step in view of his connection with Ira Haupt, sugestion that another reasonable step might have been to have spoken to the floor brokers who were doing most of the business, Fontana and Comenzo.

I believe Mr. Fontana has testified that no one has spoken to him.

Q The same series of questions we were just referring to Mr. O'Donnell discussed with you the meeting of September 23 at which the scale up margin was discussed with the clearing association.

I think as Mr. Liman brought out this morning that scale up margin was imposed and there was a five-week lag, thereabouts, between when it was imposed and when it took effect.

Do you recall those questions, sir?

A Yes.

Q In your judgment, was an imposition of scaleup margin adequate response to the situation in cottonseed oil futures as it existed in September and October 1963?

A No, it seemed to me that this was not adequate, particularly in light of the fact that the meeting at whichthe scaleup margin was discussed followed by more than one month the receipt ofthe letter from the

president of the clearing house in which he expressed concern overthe concentration of open interest, and if you add to that the fact that after the meeting the announcement -- the meeting being on September 23, as I recall --then the announcement was not made until October 10th,and then the scaleup margin was not to go into effect until November 18. The timing of this entire pattern seems to me to have been entirely inadequate.

Q In your view, Professor, are scaleup margins the appropriate way to attack a pending or ongoing manipulation of prices?

A In my view --

MR. O'DONNELL: Objection, your Honor.

MR. LIMAN: Objection.

MR. O'DONNELL: It's a leading question.

THE COURT: The objection is sustained.

Q Professor Gray, do yourecall that Mr. O'Donnell read an excerpt from your testimony before Congree in 1966?

A Yes, I do.

Q Were you testifying at that time in connection with a proposed piece of legislation, sir?

A Yes, proposed amendments to the Commodity

Q You further indicated at page 4686 on Friday that it's rarely the intent of commercial users to take delivery on a commodities market, do you recall that?

A Yes, I recall that.

Q Why is that, sir?

A Well, commercial users view the commodity fugures market chiefly as a hedging medium and their normal intention would be to dispose of their commodity in regular commercial channels and at the same time lift their futures position.

On those occasions where an opportunity does not arise for them to dispose of their commodity at a price that they deem good enough realtive to futures, they would tend to stay with their futures, and might ultimately deliver.

Those occasions are relatively rare, in terms of the total volume of the hedging positions that they establish. And further, of course, they might be attracted to delivery on futures if the futures prices are made relatively more attractive than what they see in the opportunities thay have in the regular commercial channels.

Q In your opinion, Professor Gray, is it a

fact that commercial users are increasingly taking delivery on a futures market, is that any indication that something unusual is occurring on that market?

MR. O'DONNELL: Objection. The record doesn t make any showing of this, your Honor. I don't know whether that is a hypothetical question or a fact questi . I am assuming it's a fact question. The record doesn't support it.

MR. HARRIS: I am asking that as a hypothetical question.

THE COURT: What was your response?

MR. HARRIS: I said I am asking it as a hypothetical. I can change it and bring it into this case and make it a fact question, your Honor. I am trying to establish the witness' view as to whether anything meaningful was going on.

MR. O'DONNELL: I don't think the record shows in thiscase that deliveries were increasing over an infinitestimal amount or that deliveries were being taken by commercial traders, necessarily.

THE COURT: I think that's right.

MR. HARRIS: As to commercial traders, that's right, not as to deliveries increasing. Witness

after witness said deliveries were increasing.

THE COURT: On the future part?

MR. HARRIS: Yes.

THE COURT: I think you vaguely recall that there has been testimony about deliveries were increasing.

MR. O'DONNELL: Not in the same percentage in terms of volume.

THE COURT: Let's assume it's a hypothetical question.

MR. HARRIS: Would you repeat the question, please.

THE COURT: I get the question is, assuming that deliveries are increasing in 1963 on the New York Produce Exchange, does that have any significance to you, and if it does, what is it? I suppose that is the question.

MR. HARRIS: Yes, your Honor.

A That would be of significance first, it would signify that that market is reflecting more attractive prices than are available in regular commercial channels. When that occurs during the delivery month that tends to suggest that either the futures price has gotten too high and will attract the commodity out of position, or that for some reason

or other, some soft spot in the cash market, whatever, rational traders responding by increasing deliveries would be obviously I think responding to a futures price that is high realtive to regular commercial opportunities.

Q In your view, if such a phenomenon occurred during 1963, should anyone do anything about it, sir?

MR. O'DONNELL: Objection as leading.

THE COURT: It is leading, but you may answer the question.

A Yes, I think at a minimum, exchange officials should investigate why this has occurred.

Q Do you recall that on Friday Mr. O'Donnell asked you about his definition of contract integrity, which he then stated was to the effect that up until November 19,margin was being paid on all contracts on the New York Produce Exchange.

And you testified that under that definition the integrity of contract was cut cross when they settled the contracts out when Haupat was in danger of default on the 19th and November 20th.

Do you recall that testimony, sir?

A Yes.

Q You also testified earlier about your own definition of integrity of contract, which was

clear to everybody that he hasn't.

MR. HARRIS: I was trying to establish whether under his definition they lacked integrity prior to the period and why they lacked integrity.

MR. LIMAN: And I object to that.

THE COURT: I think he's already testified that in his view the contracts lacked intergiry. That question has been raised on cross-examination. I think you had some wuqestion about Mr. O'Donnell's question.

Q In your answer to Mr. O'Donnell's question about the integrity of contracts being cut across on October 19 and 20, were you in any way answering with regard to your own definition of integrity of contracts that you testified to on Friday?

A No.

Q Can you tell us how the concept of integrity of contact in your view relates to the concept of an ordinary market?

MR. LIMAN: Objection again on the ground it's beyond the scope of direct; and not germane to any of the allegations that I have seen in this case. The first time I heard the word integrity of contract was when he took the stand. I still can't find it in the

bylaws.

THE COURT: I'm not sure it's been opened up, quite frankly. I think Professor Gray gave us his definition and has already answered it, but I will allow him to do it again.

A I believe the question was how contract integrity on my definition relates to the orderliness of a market. I think that if you have contract in the market which lack integrity, then it's as likely to impinge upon the orderliness of the market, if they lack integrity on the ground that the holders of the contracts are not financially sound; this could well lead to disorderly trading as this is revealed.

If they attack integrity by virtue of having been established in improper or illegal manner, this could lead to concentration of positions and to the potential for disorderly markets.

Q Professor Gray, in response to one of Mr. -- maybe several -- questions by Mr. O'Donnell on Friday you indicated that when the produce exchange learned on November 14, 1963 that Allied had a 90 per cent position of the open interest on the New York Produce Exchange, that it was urgent that the board of managers take some action; do you recall that?

Q The testimony in this case, Professor Gray, reveals that when Mr. Berg received this report from the CEA, he locked it up after telling Mr. MacDonald and perhaps others -- it is not important for my question-- what was in the report. And later that afternoon a meeting of the Board of Managers was convened and a Control Committee was selected and the Control Committee agreed to send out a letter to all clearing members asking for the position of their customers.

And the Control Committee sent the letter out the next day and asked for the hearing members to report on the position of their customers and it existed on that day, by November 20th.

And the testimony further reveals that the Control Committee held no further meetings. I would like to ask you whether or not in your view, Professor Gray, that action was taken with sufficient urgency, as you defined it or mentioned it in your answer on Friday.

A Well, I wouldn't call that a reflection of the urgency, that some action be taken, really for two reasons. I think you had all the information you needed at that time about positions when you knew that almost all the long position was owned by one party and you knew who it was.

But if I were to become convinced that you needed this additional information about positions of other parties, then I would have thought, confronted with the information you already had, you would have endeavored to obtain that information very promptly by telephone, rather than over a week's time.

Q Do you recall Mr. Liman asking you on Friday as to whether or not you knew wnether anyone at Continental was aware that Bunge and other people were financing Allied?

A Yes, I recall that.

Q Do you recall saying that you had no particular evidence of what anyone at Continental knew in that regard?

A Yes, I do.

Q Over the weekend were you able to find any such evidence in the record?

A Yes, was able to find some evidence that indicates a line of information to that effect.

MR. LIMAN: Is this "to that effect" an ex-pit transaction?

MR. HARRIS: You will have your turn, Mr. Liman. I am in the middle of my question.

MR. LIMAN: Your Honor, I think it is

might be quick, but I see it won't be.

THE COURT: The only thing I can do is, we will get this argument out of the way as to what documents are going to be admitted by Mr. Ellison, as far as Mr. Ellison is concerned and that will give you in terms of the motion some idea where he is.

We are not going to be able to with this argument on this, we are not going to be able to reach him and finish with his testimony today.

That seems to me clear enough. So let's try to get the jury back and let Professor Gray go back to his other duties.

(Jury entered courtroom.)

Q Professor Gray, Mr. Liman on Friday pointed out to you that Continental engaged in only three registered warehouse receipt ex-pit financing transactions with Allied in cottonseed oil futures transactions, do you recall that?

A Yes.

Q To your knowledge did Allied engage in similar ex-pit registered warehouse receipt financing transactions with Allied in soybean oil?

MR. LIMAN: Objection, your Honor. Your Honor has ruled on that.

THE COURT: Sustained.

MR. HARRIS: Your Honor, at the appropriate time I would like to make an offer of proof.

THE COURT: At the appropriate time you will be given an opportunity to make any offer you want.

Q This morning Mr. Fryer pointed out to you that of the 183 contracts Bunge had in either short position on November 14th that I think it was 92 of them were hedged.

A Yes.

Q I think he also pointed out after refreshing your recollection by showing you Plaintiff's Exhibit 154 for identification that those 92 contracts had been included in your calculation of Bunge's gain during that period. Have you had an opportunity since that testimony, sir, to make additional calculation of Bunge's gain excluding those 92 contracts?

A Yes, I have. I made a very quick calculation during the luncheon break.

Q Can you tell us what the result is, sir?

A Yes, I can.

THE COURT: We are now talking about the period from the 14th of November to the 20th.

MR. HARRIS: Right, your Honor.

A I had testified earlier that Continental's

profits --

Q Bunge's?

A I'm sorry, excuse me, sir.

MR. LIMAN: I will take it.

A Bunge's profits in its futures transactions during those few days was $559,854, and if we take out of that the 92 contracts which Mr. Fryer called to my attention, making a quick calculation would reduce those profits to $412,492 which on the assumption that there was no, during that interval, no reduction in cash position, it would be the correct figure.

MR. HARRIS: No further questions.

4b elrf 1 pm

THE COURT: All right. I don't think I need to hear any rebuttal. I don't believe that there is on this record sufficient evidence for me to send to the jury the plaintiff's contentions as to Count 2, I'm clear on that.

There is no evidence of any combination or conspiracy, no evidence I can recall in this record; and there is no evidence that constitutes bad faith that I can recall on the record or that any reasonable person -- I think that is the state of the -- could conclude from that.

So Count 2 is dismissed.

I have some problem with some parts of Count 1 in regard to the companies that are involved. I still have a little difficulty with that, and I am going to think about it. I think insofar as Count 1 is concerned, that there is some evidence in the record about these, certainly about these warning signs, et cetera.

So insofar as that is concerned, I'm not prepared to announce any decision on Count 1 from the bench. I will give that matter some thought. I guess there is nothing more to say.

MR. LIMAN: Your Honor, would you hear me for

elrf 7 [5133]

net short on the 14th, your Honor, we were net long on the 20th. If we go from net short on the 14th to net long on the 20th, which is what your Honor asked in the summary judgment position, I would suggest that that is not only evidence of Continental's good faith, but it is evidence that there was no combination here or any concerted effort to do anything but to regulate in good faith, that these men were not serving as representatives of their company, that they were serving to the best of their ability and if Haupt ended up losing it was because Haupt chose to maintain this enormously concentrated position after having been told by both the Produce Exchange and the Clearing Association --

THE COURT: I thought I had made clear, I am dismissing Count 2 and I am sure I made it clear that so far as Count 1 alleges bad faith that aspect of the Count is dismissed as well. Bad faith is out of this case.

MR. LIMAN: I think it is causation too.

MR. O'DONNELL: May Mrs. Kayemake a few remarks?

MR. HARRIS: May I just say something with respect to that, your Honor?

THE COURT: If it is brief, Mrs. Kaye.

A That chart sets forth a computation of the gain based upon a comparison of the selling price for the futures which occurred prior to November 14th and the contracts that were purchased during this period, that is November 14th to November 19th, with respect to the contracts sold during the period that the computations remained the same.

MR. HARRIS: Let's mark that chart as Plaintiff's Exhibit 262 for identification.

(Plaintiff's Exhibit 262 marked for identification.)

THE COURT: We are talking now about the period November 14th to the 20th?

MR. HARRIS: Yes, your Honor.

THE COURT: These charts that had been prepared include only what has been sold and not what has been bought?

MR. HARRIS: No. What Mr. Ellison objected to was Defendant's Exhibit --

THE COURT: No, I didn't ask you that.

MR. LIMAN: I will clear it up on voir dire very quickly.

THE COURT: I didn't ask you that.

MR. HARRIS: They take into account both the

contracts that were bought and the contracts that were sold. They value the gain or loss on the contracts that were bought differently than Mr. Ferretti did on Exhibit 154.

THE COURT: Because they don't include what was sold?

MR. HARRIS: No, no.

THE COURT: Is that right?

MR. HARRIS: No. Mr. Ellison testified the other day -- I think that is the problem, what Mr. Ferretti did on his Exhibit 154. He took the contracts that were bought on various dates, put down the price that they were bought at, he compared that with the closing price when they closed out all the contracts which tended to be lower because the market was falling and, therefore, there is a loss shown for all of the contracts that were bought during that period.

With regard to the contracts sold, he does the same thing.

Mr. Ellison testified the other day, your Honor, that he viewed that as incorrect because with respect to the contracts sold during the period, they were still outstanding.

In other words, there was still an outstanding

short position with regard to those contracts on the close-out of all contracts at the end on the 20th.

With regard to the contracts that were bought, your Honor, they were covering a prior short position and closing them out.

He suggested that the proper accounting procedure with regard to those contracts, since there was nothing left at the close -- there weren't any long contracts sitting in Continental's futures inventory, they were simply wiping out a prior short.

Therefore,he suggested the proper way of accounting for that, if you sell something in the beginning of November and you buy it back, you compare what you sold it for with what you buy it back for to figure out whether you made or lost money on the deal.

THE COURT: I am afraid that that exposition of methodology instead of clarifying it has confused me more.

MR. HARRIS: Let me have Mr. Ellison explain it.

gr1 Ellison-direct

Q Mr. Ellison, will you then explain again --

THE COURT: Maybe I might be helped if I had something before me.

MR. HARRIS: These are handwritten.

MR. LIMAN: Your Honor, if it's helpful, if you start with the assumption that somebody is 50 contracts showt and he then buys 20, what Mr. Ellison is saying is that it isn't that he has 50 short and 20 long, he nas only 30 short and, therefore, since what you are doing is reducing a short position, you cannot count the purchases in computing gain or loss.

MR. HARRIS: That's not correct.

MR. LIMAN: I believe that is correct.

Then I misunderstood.

THE COURT: All right. Go ahead.

Can you examine him without this?

THE WITNESS: I am familiar with that.

MR. LIMAN: Here, your Honor. Here are the Xeroxes that they gave us off it.

THE COURT: All right. I thought it all had been computed yesterday.

MR. HARRIS: I had been, your Honor. Mr. Liman requested copies.

THE COURT: All right.

Q Can you go through Defendants' Exhibit 154 and explain how Mr. Ferretti calculated gain or loss on that exhibit and then explain why you disagree with that calculation and then explain what you did on Exhibits 261 and 262 for identification?

A Mr. Ferretti with respect to Defendants' Exhibit 154 sets forth for the first transaction on March -- on November 14 relating to the contract month March a purchase of 30 cottonseed oil futures contracts at a weighted price of 14.14 and compares that price with the closing price of November 20, which at that time for the contract month March was 11.67 and arrives at a loss of $44,000.

What he, in effect, is doing -- in effect he is saying that if we didn't buy those contracts, we would have had a loss because the 14.14 price is being compared with the closing price.

I bleieve that a proper method of computing the gain or loss would be to compare the price at which the contracts were bought with the closing price for the previous day or the settling price because that is the way I understand that the New York Produce Exchange Clearing Association computes the amount of money that it would pay in the form of variation margin.

And since the contracts are marked to market at the end of each day, the price that had been utilized in marking to market at the close of business on November 13 was the closing price for the preceding day.

THE COURT: All right, I understand.

Q Alternatively on the other chart, Exhibit 262, you took that 30 contracts that were bought on the 14th and compared it with what?

A Well, I ascertained based upon -- I ascertained the original sales price of those 30 contracts basedupon the selling prices of the original transaction.

It was necessary in this instance with respect to the 30 contracts to go back to November 7 and November 11 to ascertain the price at which the contracts had been originally sold.

Incidentally, I asked Continental for copies of their purchase and sales tickets which they would have normally -- or is customarily determined the amount of gain orloss, and I was advised at that point in tme that they used the clearing association's records or the clearing association's settlement sheets to compute gain or loss.

Q Subsequently is that what you used, sir?

gr4 Ellison-direct

A I did compute on Plaintiff's Exhibit 261 for identification utilizing the clearing association's method, and I prepared 262 as an alternate method of computation.

Q Under either of the alternate methods of computation with respect to 261 and 262, does Continental have a gain, total gain or loss over the period November 14 to November 19?

A Well, on both Plaintiff's Exhibits 261 and 262 there are gains arising from the contracts traded during that period.

MR. LIMAN: ARe they being offered?

MR. HARRIS: Yes, I would like to offer Plaintiff's Exhibits 261 and 262.

VOIR DIRE EXAMINATION

BY MR. LIMAN:

Q Let's see, Mr. Ellison, if we can have agreement.

First I think you misspoke when you characterized Mr. Ferretti's method. You said that Mr. Ferretti said that if we hadn't bought these 30 contracts we would have had a loss.

You meant that Mr. Ferretti was saying that if we hadn't bought these 30 contracts, we would have had a gain, right?

A Yes. This is the extent to which they lost money by buying the 30 contracts.

A Right. There is no dispute, is there, Mr. Ellison, that between November 14 and November 19 Continental bought 125 more futures contracts than it sold; am I correct?

A That's correct.

Q 125 plus.

There is no dispute, is there, Mr. Ellison, that between November 14 and November 20 the price of futures declined; am I correct?

A That is correct.

Q There is no dispute, is there, Mr. Ellison, that if Continental had taken no market action during that period and had not purchased these contracts, it would have had a profit from that non-action?

A Yes.

Q And there's no dispute that if it had not bought these 125 contracts and had just stood where it was on November 14, that it would have shown a gain from taking no action as opposed to what it did in futures of $101,000?

A I'm sorry?

Q That Ferretti's and Arthur Young's methodof

computation is a comparison of what Continental's position would have been if it had neither bought nor sold futures in this period and what its position was as a result of the fact that it was a net buyer of 125 contracts?

A No, I don't believe that is correct.

Q Are you saying, Mr. Ellison, that you have made a computation of what Continental would have gained had it not purchased 125 contracts?

A Mr. Liman, I believe you said --

Q If I'm wrong --

A I have not made that computation.

Q So you are not dissenting, therefore, with the proposition that is set forth in Exhibit 154, that the result of Continental's buying 125 contracts as opposed to doing nothing is that it lost the opportunity for a $101,000 gain?

A It's a iffy computation.

Q Mr. Ellison --

A On an iffy basis that would be the answer.

Q It wasn't iffy that they bought 125 contracts, was it?

A No, it wasn't iffy.

Q It wasn't iffy that the market declined?

A No.

Q And you show, am I correct, in these exhibits that despite the fact that Continental bought these contracts net and that the market declined, that by some method of accounting it ended up profiting from its purchases during this period? Yes or no.

A (No response)

Q That you show on your charts that it profited from these 125 net purchases during this period?

A I show that it profited from both on a net basis between the purchases and sales during this period.

Q Mr. Ellison, if you set off its sales against its purchases you come to a net figure of 125 purchases, right?

A That is correct.

Q You show that it bought 701 and it sold 576?

A That is correct.

Q And that it was a net purchaser of 125, right?

A On a net basis, that is correct.

Q And yet you show in your chart that during this period of declining price that it profited from being a net purchaser of 125 contracts, yes or no?

A I show that it profited -- yes.

Q Now, Mr. Ellison, one last question. Did you learn your methodology for computing profit from the city controller's office?

MR. HARRIS: Your Honor, I object.

THE COURT: I thought you were a New YOrker,

not a Midwesterner, Mr. Liman.

MR. LIMAN: I am a New Yorker.

I take it that this is futures, not net.

MR. HARRIS: The same as Mr. Ferretti's. No dispute.

THE COURT: Where are we now?

MR. HARRIS: I think Mr. Liman just objected.

MR. LIMAN: I objected.

THE COURT: The objection is sustained.

MR. HARRIS: I move that Defendants' Exhibit 154 be stricken from the record, your Honor.

THE COURT: Let me see that.

(Pause)

MR. LIMAN: Your Honor, as far as I am concerned, as long as the record shows we were a net buyer of 125 contracts during that period, I am not interested in figures profit or loss. The jury can do that computation if it wishes, itself.

THE COURT: The motion is granted.

THE CLERK: Defendants' Exhibit 154 is stricken.

MR. HARRIS: Can I have an instruction to the jury that they should disregard the information

that came out during Mr. Ferretti's examination, but it was testified to by Mr. Ferretti that Continental lost $101,000 during the week of November 14-19.

THE COURT: The problem with thatis that I'm not going to -- the testimony in respect of it is not going to be stricken, nor is the testimony that Mr. Ellison had to know about his methods going to be stricken. The documents are just out. Mr. Ellison expounded on his theory how the profit was made, before the jury.

MR. HARRIS: Let me get from Mr. Ellison what the figures are that he thinks. I didn't ask him that.

MR. LIMAN: Same objection.

THE COURT: Let him.

BY MR. HARRIS:

Q Can you tell us based on your method of calculation how much profit you believe Continental Grain made on its trading during the period November 14 to November 20 in cottonseed oil futures?

MR. LIMAN: Objection.

THE COURT: Let him answer. Give the figure.

A My computation --

THE COURT: Just give the figure.

A $918,000 with respect to Plaintiff's Exhibit 261 and 813,000 with resepct to Exhibit 262 for identification.

THE COURT: You mean those are the two alternative methods? In other words, in your calculation they amde either $900,000 or $800,000?

THE WITNESS: That is correct.

Q Mr. Ellison, did you also make any calculation relating to Continental's gain or loss, or let me put it another way, Continental's receipt of margin on its position from the period November 18, at night on November 18 to the closeout, November 20?

A Yes, I made such a computation.

Q How did you make such a computation, sir?

A I made the computation based upon the method used by the New York Produce Exchange Clearing Association for determining variation margin, namely comparing the prices at the end of the day with that of the preceding day, and at the same time taking into account the contracts traded during the day.

Q Your compuation really just covers the trading that took place on the 19th plus the closeout, ins't that right?

A That's correct.

Q How much money did Continental make during that period of time?

MR. LIMAN: Objection, your Honor. He is talking, the question suggests, your Honor, that if you have a cash position offset by a futures position, that you make money.

MR. HARRIS: I will rephrase it, your Honor.

Q How much money did Continental receive in variation margin during the period of -- strike that.

How much variation margin did Continental receive based on the events of November 19 plus the closeout, in cottonseed oil futures?

MR. LIMAN: Object to the relevance, not the form, your Honor.

THE COURT: You may answer.

A Approximately $1,011,000.

(Pause)

THE COURT: Come, Mr. Harris, let's proceed.

MR. HARRIS: I think I may be finished, your Honor.

Your Honor, for the record I'd like to

Q And you have had the records to the extent that you could obtain them, from Allied, have you not? They have been available for your purposes?

A Yes. I assume so.

Q And you have had the records that you have asked for from various companies, Bunge, Continental Grain, and various other people who dealt with Allied?

A Right.

Q And you have had an opportunity to look at any documentation you wished with respect to 6-B transactions, if you wished to?

A If I wished to, yes.

Q And you haven't done that, have you?

A No, I have not.

MR. O'DONNELL: That is all.

MR. FRYER: I have no questions, your Honor.

MR. MINNEROP: I have one or two, your Honor.

CROSS EXAMINATION

BY MR. MINNEROP:

Q Mr. Ellison, I would like to call your attention to Exhibit 217 which is the chart they have had showing Merrill Lynch's customer positions in cottonseed oil and their purchases and sales between November 13th and November 19th?

A Yes.

Q Mr. Ellison, you recall the testimony in this case, do you not, that the steepest market decline in the period of November 14th through November 19th occurred on November 18th when the market went down some 100 points?

A Excluding the close-out.

Q We are talking about the market while it was still open.

A Right. That is correct.

Q And that was on November 18th, is that correct?

A That is correct.

Q Your chart, does it not, shows for November 18, 1963, that as regards customers of Merrill Lynch buying and selling on the Exchange that day, that there were 128 purchases and 138 sales, is that correct?

A That is correct.

MR. MINNEROP: I have no further questions.

MR. HARRIS: I just have a couple, your Honor.

REDIRECT EXAMINATION

BY MR. HARRIS:

Q Mr. Ellison, that $500,000 figure you gave Mr. Liman, was that for this case or for all

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MR. HARRIS: From Mr. Ellison?

THE COURT: From anybody.

MR. HARRIS: Before the plaintiff rests I would like to make several statements on the record absent the jury.

THE COURT: All right. We will take a ten minute recess.

(Jury left courtroom.)

(Recess.)

THE COURT: All right. Put it on the record.

MR. HARRIS: First, your Honor, for the record I would like to reoffer Plaintiff's Exhibits 147 to 154 in their complete form, which are the activity of Continental and Bunge in cottonseed oil and soybean oil during the period November 14th to November 20th, and their cumulative gains that they made during that period. We think that is very relevant to this case, your Honor.

THE COURT: I don't understand what you mean by reoffer them. The point is I made a ruling on it, and the record is protected.

MR. HARRIS: I didn't know that the record was that clear, your Honor.

THE COURT: I thought you were going to make a proffer.

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MR. HARRIS: I am, in a second.

THE COURT: You don't have to reoffer anything. If I have made an error in excluding them you are protected.

MR. HARRIS: We would like to make a proffer in that what we were going to show you in 253 for identificatin and A, B, C and 261 for identification and 261-A through F were the soybean oil registered warehouse receipt ex-pit financing transactions between Continental and Bunge. We think they are very relevant because it is a parallel market and the activity were similar.

Also Mr. Liman made a point of showing that Continental was only involved in three transactions, giving rise to an inference that it is not that extensive, and they were involved in three more transactions, each involving 500 warehouse receipts in the soybean oil market, which Professor Gray was prepared to say was relevant and material to this whole matter.

I was going to point out when Professor Gray was on the stand, and just for the record, I will, that that office of Inspector General report that was referred to, Defendant's Exhibit 211 is an investigation conducted by the Inspector General of the Department of Agriculture into the operation of the Commodity Exchange

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memory of Mr. McMinn's testimony is that he relied on Mr. Berg in that regard, there is an indication here that on October 7, 1963 the New York office of the CEA advised the Washington headquarters of the CEA that they doubted that DeAngelis' ex-pit trades were a proper function in a free market.

But no action was taken because the Washington office of the CEA felt that ex-pit trades were the responsibility of the exchanges.

MR. LIMAN: Your Honor, with respect to this, this document has in it this Inspector General's document and it has in it the statement that if the CEA had not classified Mr. DeAngelis as a hedger, that the Produce Exchange might have been able to take some action, and that the classification of him as a hedger was misleading to traders and to the Produce Exchange, which had a right to reply upon it.

The document speaks for itself.

MR. HARRIS: I will offer the document in evidence.

MR. LIMAN: No, I object to it. But I just want the record to be clear as to what the document says.

THE COURT: The document is clearly inadmissible no matter what it says.

Turning first to Plaintiff's Exhibit 122, Dr. Arthur, you have had occasion to look at that exhibit with respect to monthly volume of trading in cottonseed oil futures contracts in 1963, have you not, sir?

A Yes, I have.

Q Do you see that in that exhibit the volume of trading increased during 1963 in cottonseed oil futures contracts; do you not?

A Yes, it did.

Q Is that fact evidence to you, Dr. Arthur, taking it by itself of any kind of a disorderly market in cottonseed oil futures in 1963 on the New York Produce Exchange?

A No. In fact, I would say that it suggests that the trading -- that the exchange was being used more extensively than in the preceding period.

Q Why isn't it evidence to you of a disorderly market?

A Because the market is there to serve as a facility for people who want to trade, and if there's an increased volume of trading, it is an indication prima facie that people who are traders are using it more extensively.

Q Looking at the same exhibit, Plaintiff's Exhibit 122 in evidence, Dr. Arthur, is that increase in volume of trading which appears in that exhibit in 1963 evidence to you of any kind of a price manipulation in 1963?

A None at all.

Q Why not?

A Because for every purchase there is a sale. The price is an outcome of a meeting of minds between a buyer and a seller. The price is not reflected in this exhibit, and simply the presumption that a trade existed is no indication that it was not a bona fide trade.

Q Will you look, please, Dr. Arthur, at Plaintiff's Exhibit 123 in evidence.

I ask you if you have had an opportunity to look at that exhibit before you got on the witness stand?

Yes, I have.

Q That exhibit shows an increase in 1963, does it not, on the New York Produce Exchanbe of the size of open interest in cottonseed oil futures contracts?

A Yes, that is true. Over the year the size was larger than previous years.

Q Yes. Is the fact that the open interest increased in size as appears in that exhibit evidence to you of any kind of a disorderly market in 1963?

A None at all.

Q Why not?

A The reason here again is that the commitments that are entered upon the exchange are commitments that are bilateral, a buyer and a seller.

The volume of open interest is not subject to any limit that I know of as long as there are buyers and sellers interested in making such commitments.

Therefore, it is not like a market in which there is a very limited supply. The potential supply -- this is perhaps stretching it a little -- is almost infinite. Certainly one doesn't expect this to be reached.

Q Is the increase in 1963 of the size of the open interest evidence to you of any kind of a manipulation of the cottonseed oil futures market in 1963?

A No, not at all.

Q Why not?

A Well, partly because it does not show a price, partly because it in itself reflects that there were balancing forces working and people entered as free men, made their trades, they were not as far as this record shows in any way subject to compulsion.

MR. HARRIS: Your Honor, just for the record, when the witness said "this record shows" are you referring to Exhibit 123?

A This exhibit shows, excuse me.

Q With respect to both Exhibit 123 we have just been talking about and Exhibit 122, do you see that the information contained on those two exhibits has as a source publications, does it not, of the Department of Agriculture?

A That's correct, on these exhibits.

Q Now, I'd like you to direct your attention to Exhibit 125 with respect to the subject of deliveries. Plaintiff's Exhibit 125, cottonseed oil futures markets settled by delivery, as compared to size

of open interest on the first notice day. And again with respect to 1963, do you see that the deliveries of contracts that were settled by delivery increased during that year, did they not, with respect to first notice day?

A Yes, this is true during the months up to the October delivery.

Q Is the fact that cottonseed oil futures contracts which were settled by delivery in 1963 that they increased, evidence to you of any kind of a disorderly market?

A No.

Q Why not?

A I should say it's evidence that the market was being used to a greater extent for one of the legitimate purposes for which the market was organized.

Q You will notice that the source of this document states "Commodity Futures Statistics, Statistic Bulletins 274" and other numbers.

When do those become available, daily or at a later time?

A I'm not srue, I think these are the ones that come out at the end of the year and summarize the

results -- the report of transactions during the year.

Q With respect to Exhibit 125 and the figures shown there with respect to the increase in deliveries, is that information evidence to you of any kind of a manipulation of the market?

A No.

Q Why not?

A The basic indication I get from those figures is that this market was being used very substantially by traders who were commercial traders, and therefore recognized that the market provided them with an extension of their commercial market, and if it was the best place to make a sale by delivering the produce through the exchange, they would choose to make the delivery that way.

Q So the delivery served a commercial purpose in that situation, is that right?

MR. HARRIS: I object to leading, your Honor.

MR. O'DONNELL: Just simply trying to clarify the testimony.

THE COURT: We are going to have a lot of objections if you lead the witness, so we might as well stop it.

MR. O'DONNELL: All right, your Honor.

Q Directing your attention, Dr. Arthur, to Exhibit 124 in evidence, do you have that before you?

A Yes, I do.

Q That is an exhibit showing commitments of traders in cottonseed oil futures during 1963 on the New York Produce Exchange not by the names of the traders, but by showing that hte large traders, broken down by large traders and small traders, long and short, speculative and hedging, do you see that?

A Yes, sir.

Q And you see that with respect to those traders, that the commitments of the traders with respect to large traders increased as the year progressed, did it not?

A Yes, sir.

Q Per cent held by large traders, etc. Is that increase in the interest of large traders with respect to per cent of the commitments they held evidence, any kind of evidence to you of a disorderly market in 1963 on the New York Produce Exchange?

A No, I see none.

Q Why not?

A The portion of the trading -- of the positions

that were in the hands of large traders indicates that these were sophisticated traders; particularly the hedging portion of it suggests that those traders who were using the market as an adjunct to their commercial operations.

The situation does not reflect, as far as I can see, any indication of manipulative activity. On the holdings of large traders in hedging, I notice an increase in the long hedging, but since long hedging is a perfectly legitimate operation, particularly in a market where there are dealers who are both buyers and sellers, this would not give me great concern looking at it by itself.

Q Would not give you concern from either the standpoint of disorderly market or fromthe standpoint of manipulation, is that right?

A Well, from both. I would record it simply as a fact that could reflect perfectly normal use of the market.

Q Will you look, please, Dr. Arthur, at Plaintiff's Exhibit 126 in evidence. Do you see that again is an exhibit which you have had an opportunity to look at prior to today, have you not?

A Yes.

Q And that exhibit shows, among other things, does it not, that the monthly volume of cottonseed oil contract ex-pits transactions in 1963 fluctuated from month to month but on an increasing scale, with some exceptions?

A Yes, that is true.

Q Is it a fact that there were more ex-pit transactions in 1963 than prior years, or that there were more in some months in '63 than other months evidence to you on the basis of that exhibit before you of any kind of a disorderly market on the New York Produce Exchange?

A No, not at all.

Q Why not?

A I regard ex-pits as simply a service provided by the exchange to its members as a convenience to those who trade, so far as 6B ex-pits are concerned, those who are trading commercially in the product. I would expect that there would be a larger number of ex-pits at a time when the exchange provided an opportunity, for instance, for a person to earn carrying charges in his transactions. There are many reasons why ex-pits would be a useful service to a trader.

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Q Is the fact that the ex-pit transactions increased to the extent that I indicated in my prior questions in 1963, Dr. Arthur, evidence to you of any kind of a manipulation of the New York Produce Exchange futures market in cottonseed oil in 1963?

A No.

Q Why not?

A My own feeling is that ex-pits are almost always a reflection of a meeting of minds of two traders, the one who gives up and the one who takes the ex-pit position, both of them are commercially skilled and intelligent.

They do not represent a -- they don't represent a contrived trade in the sense that there was not a bona fide transaction; in fact, the definition of 6-B requires that they should be -- there should be a bonda fide cash transaction; a sale and payment on the cash side of the market, and merely assuming a position on the futures market that enables the purchaser on the cash side to acquire a hedged position at the same time that the seller covers a hedge position.

Q Dr. Arthur, with respect to these exhibits that are before you from 122 through 126 having to do with these increases in volume of trading open interest,

deliveries, commitments of traders, and ex-pits, you have heard those separate items referred to by prior testimony in this case as some kind of warning signals, have you not?

A Yes, I have not been able to identify whether it is per se warning signals or whether it is what they show to be hedged warning signals.

Q My question to you, sir, is, having seen those figures with respect to each of those increases, would put any or all of them in combination, any kind of combination with respect to those five items suggest to you, if you put them in whatever combination you wish to, that a manipulation was being attempted on the New York Produce Exchange in 1963?

A The information before me on these five exhibits would not lead me to expect to find a manipulation or to suspect its existence.

Q Why not?

A I think the easiest way for me to explain this is to refer to three criteria that Professor Gray presented: Intent, price impact, and a retrospective demonstration that the manipulation had occurred with the accused having a chance to explain why he was acting legitimately; if you claim to have been.

In terms of intent to manipulate I don't think these data reveal that in any way. I would say that in terms of price impact they have not given any information. In terms of the retrospective analysis this could be taken up in two different ways.

One is that some of the data, particularly the data relating to the commitments of traders was itself only available for retrospective analysis, and therefore it wouldn't lead me to expect before I saw such information, that there was reason to look for manipulation.

After I saw it, it would merely be a record of the position of several categories; it would not tell me how many traders were represented by any of those categories.

Q If you were looking to see whether there was a manipulation of prices on an exchange, what kind of evidence would you look for, Dr. Arthur?

A I would say that in looking for evidenc relating prices, and an effort to find such evidence would require that I examine the factors that are known to effect prices, the economic factors and to look for a substantial variance of the actual price from those factors.

I would also want to look at price interrelationships, in other words, to know whether these prices were what economists call in line with related or substitutable items. I also, I think, want to examine the price series to see that there were fluctuations, that there didn't seem to be arbitrary pegging of a price at a constant level, that sort of examination.

None of these, however, I believe would give me, as Professor Gray said, conclusive evidence until I could look back and see if there were some further supporting data.

Q You heard Professor Gray testify that he had made no analysis of price to determine what the level of the prices would be if the manipulation he said he thought he detected, took place; do you recall that?

A That is true. It made no such analysis as far as I heard him on the stand.

Q What, if anything, does that analysis for failure to make that analysis indicate to you?

A Well, it indicates at least two things:

That it is a devil of a big job to undertake it, and second, that there is also the difficulty that such analysis is not likely to be conclusive as a sufficient evidence of manipulation, absent some very

peculiar patterns of the sort I mentioned, pegging and things like that.

Q With respect to the subject of manipulation, Dr. Arthur, would you agree or disagree with the proposition that manipulation is easier to observe and determine in a retrospective way, looking back as to what went on some years before, than it is as an ongoing operation while it may be going on?

A Oh, certainly.

Q Why is that?

A In either prospect you get more information and you lose nothing that you had earlier. You merely have the opportunity to add further information. I would say that the investigation of manipulation is something that has to be examined in a series of levels of investigation.

The first level, from a very practical point of view, is that a market is self-regulating because two traders meet and have to have a meeting of minds. There is a manipulated as well as a manipulator. In this situation you have a much better chance to have a balance or counteraction of manipulation than you would in a market where price is an arbitrary consideration and where people have to trade.

Q In commodities markets, Dr. Arthur, are there situations in which either a buyer or a seller attempt to manipulate a market and is unsuccessful in doing, for some reason?

A I would assume that this is quite possible. There are innumerable people who trade who are seeking a profit by any means they can get away with.

So attempted manipulations can be unsuccessful as well as successful?

Why is that?

A Part of the structure of the market is designed so that by having free and open trading it will be harder for a person to deceive or manipulate.

Q With respect to these five factors that I called your attention to here this morning in these exhibits, 122 to 126, plaintiff's exhibits with respect to volume of trading open interest, deliveries, commitments of traders and ex-pits, have you ever seen any published theory of warning signs that states that those factors in any way are evidence of either a disorderly market or a manipulation?

A No. All that I have seen of these are the kind of information told by the operation of the markets that are routine. They can be used for many

Q Did you hear him state that, so far as he was concerned, he believed that represented some kind of a manipulation of the market by taking the warehouse receipts off the market?

A I think that was his inference.

Q Do you agree with Mr. Gray in that respect?

A No.

Q Why not?

A Well, I think I have to indicate the role of the exchange in this kind of a combination transaction of warehouse receipts, sales, purchases. The role of an exchange is a benign one as far as a price impact is concerned.

Gray implied that it was not, that it did affect price.

Q Are you saying that ex-pit transactions do not affect price?

A Yes. This I think would require me to take three steps.

Q Please do.

A If I can outline these steps --

Q Please do.

A -- I think I can make it clear.

I think it is fair to conclude from the

Q During the years you were with Swift did Swift participate in futures, commodities futures transactions?

A To a degree, yes.

Q Did it have commodities futures traders on its staff?

A I wouldn't characterize them as commodity futures traders at that time. There were people who were traders in the cash market who were the ones who usually handled the commodities futures transactions as far as the contact with the broker was concerned.

Q Did you at the time you were at Swift participate in any of the commodities futures transactions, as far as trading?

A No.

Q Did you have occasion during those years to discuss with the people who were doing the cash and futures trading aspects of their activities with them?

A Yes, I was working for them in terms of the economic aspects and outlook for their commodities.

Q When you left Swift & Company in 1960, I believe, and went to be a professor at the Harvard Business School, did you stay in contact with these

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Q Would that be true if the volume even doubled what it had been in 1963 on the New York Produce Exchange?

A I should say so, as long as the -- well, the volume could double if the produce was turned over twice as many times, went through more hands, and it would make no difference.

Q Ex-pit trades, there is testimony, were posted on the board of the New York Produce Exchange, indicated how many contracts had been traded ex-pit each day?

A Yes.

Q In your view, did the traders that follow the market and trade in it give any weight to the fact that the large numbers of contracts were being traded ex-pit?

A I never asked them, I don't know --

MR. O'DONNELL: Objection, your Honor.

THE COURT: Well, he said he didn't know. Let's take a ten minute break.

(Jury left courtroom.)

(Recess.)

In open court, jury present.)

Q Professor Arthur, we have been talking about ex-pits before the recess. Plaintiff's Exhibit 126 indicates that during 1963 there were 35,453 -- I'm

sorry, 438 total 6-B ex-pits to the New York Produce Exchange, do you see that?

A Yes, I do.

Q Is it your testimony that had there been 135,438 6-B ex-pits on the New York Produce Exchange during 1963, that that couldn't have concerned you any more than the amount that was traded?

MR. O'DONNELL: Objection, your Honor. Repetitious.

THE COURT: You asked him that question before.

MR. HARRIS: It is double and I am just going --

THE COURT: There is no point in asking the same question --

MR. HARRIS: I think I am entitled --

THE COURT: The objection is sustained.

Q You will also see looking at Exhibit 126 that in 1962 there were only 434 contracts traded ex-pit on the New York Produce Exchange?

A That is correct.

Q And the year before that there were 504 contracts traded in total 6-B ex-pits on the New York Produce Exchange?

A According to this exhibit, that is correct.

Q Can you tell me a rough calculation of how many times the number of ex-pits that took place in 1962, the total that took place in '63 would amount to? Is it 500 times, 1,000 times --

MR. O'DONNELL: Objection, your Honor. It speaks for itself.

THE COURT: I think it does. Why does he have to do the arithmetic? We have the numbers.

Q Forgetting the percentage, which was what I was trying to calculate, of the differential, you will agree with me there is a substantial different between 434 ex-pits in 1963 and 35,438 in 1963, is that right?

A Yes, I would say that is a substantial difference.

Q Would that difference have concerned you had you been a market regulator during 1963 on the New York Produce Exchange?

A The word concern, I would want to know how I appraise it. It was one of the facts of what was going on in the market. Concern is -- it was a part of the business of the Exchange and I wanted to be familiar with what was going on.

Q Would you want to know any more than those bare statistics?

A Sure. I would want to know that they were legitimate ex-pits that were properly supported and that the Exchange was doing business with people who were actually in the cash market, and I would like to have an understanding that the use of ex-pit played a rational part in the kind of transactions they were engaged in.

Q How would you go about making that determination, sir?

A I think I would look to the confirmatory material; I would be concerned that the warehouse receipts being considered were checked; I think that I would possibly ask the clearing members that were doing this if they were cognizant of it.

I would, I think, assume that they were earning a fair size commission for handling this sort of thing and that they would be willing to explain to me whether or not this was a legitimate kind of business.

Q This morning we were talking about ex-pits, you said that you would be at least interested in knowing whether they constituted a contrived trade rather than a legitimate bona fide cash sale.

A I don't know that I drew that distinction. I don't know that I could. The ex-pit alone is an agreement between two parties without having any other

followed you up to then.

Not only you and the witness have to follow it, the jury and the Court, too, have to try and follow it.

MR. HARRIS: I appreciate that, your Honor.

Q Professor Arthur, you also looked at this morning one more chart that we haven't discussed, which is Exhibit 124, the commits of traders.

You can see from Exhibit 124 that from March 1963 to July 1963 the position of long hedgers in cottonseed oil futures jumped from 624 contracts to 4,384.

A Yes.

Q Professor Gray just roughly in his head on the stand said that to him comparing the long hedging position with the total long position, it looked like it had gone up from about -- I'm misstating one fact.

Professor Gray was looking at the monthly reports that come out. This chart I think you said this morning was prepared from the year end Department of Agriculture report on commitments.

A It says Commodity Exchange Authority Publications entitled Commitments of Traders in Commodity Futures.

Q Yes.

A That report, as I understand it, comes out

twice a month, some days after the 15th and the end of the month.

Q Let me show you Plaintiff's Exhibits 10-C and 10-G in evidence and ask if those are the kinds of reports that we are talking about?

A Yes, this is my understanding that was taken from this series of reports.

Q Okay.

Without trying to deluge you in a sea of numbers, sir, let me see if I can summerize a little bit.

Professor Gray indicated that roughly the percentage of long hedging -- percentage of contracts, long contracts held by hedgers on the New York Produce Exchange jumped from somewhere under 20 per cent to somewhere around 70 per cent during the period March to July 1963 and to him that was a sign that something unusual was occurring.

Do you agree with that?

A I think I would agree with it, but I would like to look at a longer spread to see how friendly that sort of thing happened in the past.

I think I would call it unusual enough that I would want to be aware of it and to perhaps make some inquiries about it.

Q As a regulator, Professor Arthur, would it be your general approach that any kind of attempted manipulation, you'd first see if the traders could take care ofit themselves --

MR. O'DONNELL: I object, your Honor.

Q Following that, if they couldn't, you would take some more action?

MR. O'DONNELL: I object to that on the ground that now there is assumption, he switches from what Allied was attempting to do and whether that was a manipulation to an assumption in this question that the regulators ofthe market knew the intentions of Allied.

MR. HARRIS: I will reframe the question and add the perception there.

Q I am speaking again to you as if you were in the role of a regulator, sir. Would it be your general approach when you perceived some potential manipulation or some activity that you might think related to an attempted manipulation, that your first defense, so to speak, you'd see if the traders could take care of it, and if the traders couldn't take care of it and it continued, then you'd take some additional action?

A I don't think I answered in that context. I think I said I would want to explore my own mind, not take a sequence of action. I'd want to say to myself, is this something that the arena, the give and take of the trading arena is going to take care ofit.

If I was satisfied that this had a very good chance of being successful, I wouldn't take further steps.

If, on the other hand, I felt that there were activities that the trading process wasn't going to take care of, if there were some things that needed to be aired, if there were complaints by other traders who said I am helpless, I would try to see what the most appropriate action fitted to the particular case in point would be.

Q You are familiar, are you not, with the operations in general of clearing houses, the role that the clearing house plays in the commodity markets?

A I think so.

Q If you were an exchange regulator in 1963, Professor Arthur, would you give credence to the opinion -- let me rephrase that -- if you were wearing the shoes of a regulator during 1963 would you be concerned if the head of the clearing association or the

clearing house of your market indicated to you that they were feeling some apprehension over increasing concentration of contracts in the hands of a relatively few clearing members?

A I'd be very happy he spoke to me.

Q I don't think that was my question, sir.

A Did you say would I be apprehensive?

Q Would you be concerned?

A Well, my concern would be that I had a letterhead of the clearing house and that I would like to see thatthe clearing house was performing its functions as a complementary part of the exchange by protecting the integrity of those transactions that the clearing house was responsible for.

Q If he head of the clearing house told you that they were large offsetting positions which were being established by apparently affiliated interests though the medium of ex-pit transactions and that clearing house believed that situation to be unhealthy and it was concerned that the position of the exchange and the clearing association might be jeopardized by that, would that have concerned you?

A I certainly would not ignore what the head of the clearing house told me. If this means

concerned, yes. I think that I would say that I wanted the clearing house to be assured that their obligations were as well protected as possiblewithin reasonable amounts of caution orassurance that the contracts would be honored and completed.

I would say if there were contracts short and long tendered and paired, I would expect them in all probability to be washed out by pairing. It wouldn't cause me that much concern compared to the way I might feel if somebody had taken an equivalent position on the basis that represented straight speculation.

Q If the clearing association told you as a regulator not only the facts that I have already mentioned but then stated to you that they suggested the exchanges, and that I am referring to you as a regulator, investigate the situation, would you conduct an investigation?

A I'm not entirely clear what my authority would be to conduct such an investigation. It's my impression that the manager of the exchange has to go aboard or somewhere else in order to get the authority to do such a thing, and he has other possible actions that he could take, and certainly shouldn't

Haupt & Company in 1959?

A As manager of their commodity department.

Q Who employed you at that time, sir, in Ira Haupt & Company?

A Mr. Ira Haupt, Sr.

Q There were several Mr. Haupts, were there not?

A Yes, sir.

Q Was this the old defendant Mr. Haupt?

A He was the old defendant.

Q All right, sir.

When he hired you to be manager of the commodities department at Ira Haupt & Company, did he tell you what kind of a department he wished that department to be?

A He told me it was a service department for the accommodateion of the security clients of the firm.

Q Will you tell us what your duties were as manager of the commodities department beginning in 1959 at Ira Haupt & Company?

A The work of the commodities department is almost wholly involved with a more or less complex accounting procedure which has to be performed in conformity with the